BULKY DOCUMENTS

(Exceeds 300 pages)

Proceeding/Serial No: 91156321

Filed: 4-15-08

Title: DEPOSITION OF BRADLEY L. PECK

Part 5 of 7

Processed by Curtis Puryear

the availability of hybrid retirement plans.

Sources for additional information: Consolidated Appropriates Act, 2004 (H.R. 2673); Preserving Cash Balance Plans for Workers: Treasury Proposes Legislation to Protect Defined Benefit Plans and Ensure Fair Treatment of Older Workers in Cash Balance Conversions (February 2, 2004).

Chamber contact: Labor, Immigration, and Employee Benefits Division at 202-463-5522.

The increase in the number of defined contribution plans in the past decade has made these plans a critical component of retirement security for millions of workers. Consequently, it has become increasingly important to ensure that these plans continue to provide necessary benefits to retirees without becoming overly burdensome to employers.

On October 11, 2004, Congress passed the American Jobs Creation Act of 2004. The Act adds a new section 409A to the Internal Revenue Code—the first Code provision specifically governing nonqualified deferred compensation plans. The business community lobbied aggressively to narrow as many of these provisions as possible and was successful in changing some of the more onerous provisions. Nevertheless, the Act implements substantial changes for nonqualified deferred compensation plans. The Chamber is working with the Treasury Department, the White House, and Congress to enact regulations and guidelines that address the many concerns that have arisen under these provisions.

In late 2003, scandals in the mutual fund industry made headlines, and legislative and regulatory reactions to these scandals could affect defined contribution plans. Two issues are of specific concern to plan sponsors: late trading and market timing. Late trading refers to trading done after the market closes to capitalize on profits or losses resulting from events occurring after the market closing time. Late trading is illegal. Market timing, in the current debate, refers to the practice of trading fund shares rapidly to take advantage of stale information (for example, there is usually a lag in updating prices for international markets and junk bond funds). Although market timing is not illegal, many mutual fund companies prohibit it in their internal policies. The Chamber submitted comments to the Securities and Exchange Commission (SEC) on both late trading and market timing, expressing concern over rules that would unfairly and unnecessarily disadvantage plan participants.

Sponsors of defined contribution plans could still be affected by the demise of Enron. After Enron's collapse, Congress vowed to respond to the situation of workers left with dramatically reduced retirement savings, and a variety of new restrictions and

requirements, largely affecting defined contribution retirement plans, were included in proposed legislation. The Chamber did not endorse any of the post-Enron pension bills. Instead, the Chamber founded (with a small number of other organizations) and co-chairs the Coalition for Employee Retirement Benefits, which has successfully lobbied against onerous changes to qualified retirement plans. In 2003, both the House and the Senate again introduced Enron-related legislation (H.R. 1000, the Pension Security Act of 2003, and S. 2424, National Employee Savings and Trust Equity Guarantee Act 2004 [NESTEG]). Neither piece of legislation moved beyond the jurisdictional committees. An updated version of NESTEG is likely to be reintroduced in 2005.

The U.S. Chamber is committed to maintaining the viability of the private retirement plan system and opposes onerous and unnecessary legislation that does not address the serious issues raised by the current mutual fund scandal or the demise of Enron.

Sources for additional information: American Jobs Creation Act of 2004 (H.R. 4520); National Employee Savings and Trust Equity Guarantee Act of 2004 (S. 2424); Pension Security Act of 2003 (H.R. 1000); Amendments to Rules Governing Pricing of Mutual Fund Shares (Release No. IC-26288; File No. S7-27-03); Mandatory Redemption Fees for Redeemable Fund Securities (Release No. IC-26375A; File No. S7-11-04).

Chamber contact: Labor, Immigration, and Employee Benefits Division at 202-463-5522.

As a result of a confluence of events termed "the perfect storm" (rising interest rates, falling asset values, and low profits), defined benefit plans have experienced funding problems in recent years. These problems have spurred the debate on pension funding generally and initiated calls for funding reform. The replacement of the 30-year Treasury interest rate assumption, overall funding reform, and multiemployer pension reform will be significant issues in the 109th Congress.

The replacement of the 30-year Treasury rate for the determination of pension liabilities and other calculations is an issue of paramount importance for sponsors of defined benefit plans. On October 31, 2001, following a three-year program of buying back 30-year bonds, the Treasury Department announced that it would stop issuing the bonds. In 2002, Congress issued a temporary fix that expired on December 31, 2003. In the ensuing debate over the 30-year Treasury fix, the two proposals given primary consideration were a composite corporate bond rate, which was endorsed by the business community and others, and a yield curve formula, which was endorsed by the administration. On April 9, 2004, Congress passed another temporary fix in H.R. 3108, the Pension Funding Equity Act of 2004. H.R. 3108 replaces the 30-year Treasury bond interest rate assumption with a composite of long-term corporate bond rates for the years 2004 and 2005. The U.S. Chamber believes that a composite corporate bond rate is the appropriate permanent replacement for the 30-year Treasury rate, because it is a realistic interest rate assumption that reflects both the long-term rates actually earned by pension plans and the annuity rates charged to terminating pension plans. The Chamber continues to work toward legislation that will permanently replace the 30-year Treasury bond interest rate assumption with a composite corporate bond rate.

The Chamber is also working toward comprehensive pension funding reform to address the issues faced by plan sponsors over the past few years. To help shape the debate, the Chamber hosted a forum on September 14 for U.S. Representative John Boehner (R-OH), chairman of the House Committee on Education and the Workforce, and one on October 8 for Pension Benefit Guaranty Corporation Executive Director Bradley Belt. In 2003,

the U.S. Chamber testified before the ERISA (Employee Retirement Income Security Act) Advisory Council on funding reform and met with administration officials to discuss comprehensive funding reform. As a follow-up to the administration meeting, the Chamber created a policy statement on comprehensive funding reform that it will use as a platform to address funding issues that are vital to the employer-provided retirement plan system.

A unique category of defined benefit plans that requires significant attention is the multi-employer plan. Multi-employer plans are maintained by two or more employers and are collectively bargained. While only 10 percent of defined benefit plans are multi-employer plans, these plans cover 25 percent of all participants in defined benefit plans. All defined benefit plans, including multi-employer plans, are required to meet minimum funding standards under the Internal Revenue Code; however, the funding rules for multi-employer plans differ from those for single-employer plans. Multi-employer plans have been affected by the same perfect storm of events, and many of these plans need legislative funding reforms. H.R. 3108 (mentioned above) also included a funding provision for multi-employer plans that provided targeted funding relief for certain qualified plans. The issues surrounding multi-employer plan funding are complex and require both short-term and long-term solutions that the Chamber will continue to seek in 2005.

The Chamber is committed to the employer-provided retirement plan system and believes that any funding reform should ensure the continued viability of the defined benefit plan system.

Source for additional information: Pension Funding Equity Act (H.R. 3108).

Chamber contact: Labor, Immigration, and Employee Benefits Division at 202-463-5522.

Since the creation of the Department of Homeland Security in 2003, there have been many changes to the processes for obtaining visas and entering the United States for business visitors, students, tourists, and foreign employees. While necessary, these changes have resulted in delays and difficulties for visa applicants and the U.S. entities that benefit from their entry. Additional border controls, if not implemented carefully, have the potential to create serious delays and backlogs at our borders. In addition, statutory deadlines for including biometric identifiers in international travel documents will be difficult for many countries to meet, creating the potential for the United States to lose millions of visitors from countries in the Visa Waiver program, which includes close allies and trading partners such as Japan and the United Kingdom.

The Chamber has testified many times before Congress and has worked diligently with the Department of Homeland Security and the State Department to deal with the issues and impacts of visa delays and denials at U.S. consular posts overseas. These issues include lost business for U.S. companies, movement of international conferences and trade shows to other countries, a decline in the number of foreign students and scholars in our universities, and difficulties of multinational companies in managing their worldwide workforces. The Chamber has also worked closely with the Department of Homeland Security on its implementation of the US-VISIT system of border controls to ensure that the system does not and will not have a negative impact on legitimate travel to the United States. Finally, the Chamber actively supported a legislative extension of the biometric passport deadline for Visa Waiver countries to allow the continued viability of that important program for travel and commerce.

New processes, delays, costs, and increased scrutiny of travelers to the United States have created broad perceptions overseas that our country no longer welcomes foreign visitors. These perceptions, if not addressed, could cause significant economic loss to the United States from losses of tourist travel and spending, business and trading opportunities, and diplomatic and general goodwill in the world. The Chamber will continue to work, on its own, through its coalitions, and through the American Chambers of Commerce overseas, to ensure that the United States remains a

welcoming nation for international tourists, business, and scholars. The Chamber will pursue process changes with the administrative agencies, work with Congress on resource allocation and legislative changes where necessary, and continue to portray the United States abroad as "open for business."

Sources for additional information: Americans for Better Borders (www.abbcoalition.org); U.S. Visa Web site (www.unitedstatesvisas.gov); U.S. State Department Consular Affairs Web site (http://travel.state.gov); US-VISIT Web site (www.dhs.gov/us-visit).

Chamber contact: Labor, Immigration, and Employee Benefits Division at 202-463-5522.

The U.S. Chamber led the fight for reform of regulations governing white collar employee overtime eligibility. In August 2004, the Department of Labor (DOL) finalized the first major revisions of the regulations since 1954. Building on these reforms, the Chamber urges DOL to continue much-needed regulatory reform by turning to the Family and Medical Leave Act (FMLA).

FMLA was enacted by Congress to provide unpaid leave for employees to care for family members or deal with "serious health conditions." Implementing regulations issued by DOL, however, have resulted in an unintended expansion of coverage under FMLA, unnecessary administrative burdens and costs, excessive workplace disruptions, and growing fraud and abuse. In March 2002, the Supreme Court struck down a portion of the FMLA regulations, saying they were in conflict with the Act. DOL has the authority to revise the implementing regulations to dramatically limit fraud as well as the administrative burdens imposed by the current regulations. Proposing much-needed reforms to these regulations should be among DOL's top priorities.

Despite all the difficulties businesses face in implementing FMLA, some in Congress have proposed expanding the Act or enacting new leave mandates. For example, during the 108th Congress, expansion legislation included the extension of FMLA to employers with as few as 25 employees and the addition of various new categories of leave, such as time off to attend teacher conferences, to care for an ill domestic partner, or to address domestic violence. None of these bills was enacted. The U.S. Chamber is committed to the proposition that no consideration be given to FMLA expansion until flaws in the current law and regulations are corrected. Moreover, the Chamber considers further expansion of FMLA to smaller employers inappropriate.

The 109th Congress is likely to see numerous proposals to increase the federal minimum wage by $1.85 per hour or more. Numerous proposals were introduced last year, such as the Fair Minimum Wage Act, which would have raised the minimum wage to $7.00 per hour over two years. Although recent efforts to raise the minimum wage have not been successful, the issue remains politically attractive for many members of Congress, and

President Bush has expressed support for a wage increase if it is coupled with state flexibility.

The U.S. Chamber will continue to oppose an increase in the minimum wage. However, if such a proposal comes up, there may be companion legislation to help mitigate the adverse effect of a mandated wage increase on businesses, such as targeted reform of the Fair Labor Standards Act (FLSA).

Source for additional information: FMLA Technical Corrections Coalition (www.workingforthefuture.org).

Chamber contact: Labor, Immigration, and Employee Benefits Division at 202-463-5522.

USCC 55570

LEGAL REFORM

USCC 55571

A key weapon in the fight against excessive litigation is alternative dispute resolution (ADR) mechanisms, such as arbitration and mediation. The U.S. Supreme Court has stated that the advantages of arbitration are many: It is usually cheaper and faster than litigation; it typically has simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; and it is often flexible with regard to scheduling times and places of hearings and discovery devices.

According to a survey conducted by the *Corporate Legal Times*, 83 percent of business attorneys find arbitration to be as fair as or even more fair than lawsuits. Additional studies by the American Bar Association show that arbitration takes less time than traditional litigation, and the National Arbitration Forum estimates that the cost of arbitration is roughly 10 percent of the cost of going to court. Unfortunately, ADR mechanisms, such as mandatory binding arbitration, have been under attack at both the federal and state levels for a number of years. In fact, the problem is close to reaching the crisis stage at the federal level.

During the 107th and 108th Congresses, a number of pieces of legislation that would have limited the availability of mandatory binding arbitration in various contexts gained significant momentum. Similar efforts are expected in the 109th Congress.

The U.S. Chamber will continue to oppose legislation that threatens the availability of ADR mechanisms.

Sources for additional information: www.uschamber.com; www.legalreformnow.com; www.arb-forum.com; www.adr.org; www.overlawyered.com.

Chamber contact: Matt Webb, U.S. Chamber Institute for Legal Reform, mwebb@uschamber.com.

USCC 55572

As a result of the widespread use of asbestos in manufacturing before the 1970s, tens of thousands of Americans were subject to occupational exposure, placing them at risk for developing asbestos-related diseases, including asbestosis, lung cancer, and mesothelioma, an incurable cancer. The 1994 edition of the medical text *Occupational Lung Disorders* described asbestosis as a "disappearing disease"; but while asbestos-related diseases may be disappearing from American hospitals, lawsuits by alleged victims of asbestos are on the rise in American courthouses.

Under current law, asbestos lawsuits have become very profitable for personal injury lawyers. Companies have paid out an estimated $70 billion on some 730,000 asbestos injury claims, making it the most expensive type of litigation in U.S. history. Massive enterprises have been established to recruit asbestos "victims" to sue companies, although many of these recruits have had only passing exposure to asbestos and show no signs of illness. The asbestos litigation system is known to be rife with fraud and abuse.

Because the system is clogged with questionable asbestos lawsuits, people who truly have been injured by exposure to asbestos are not receiving the compensation they need and deserve in a timely fashion, if at all. Additionally, the asbestos litigation system has forced bankruptcy on more than 70 companies, costing as many as 60,000 Americans their jobs.

Total corporate asbestos liability is now expected to reach or exceed $200 billion. The bulk of the recent surge of asbestos-related litigation is occurring among claimants alleging nonmalignant asbestos-related conditions—the most subjective diagnoses. Unfortunately, the system is so skewed that some plaintiffs who are sick have their cases consolidated with those who are not yet showing signs of physical impairment.

The result is that those who are not showing signs of illness effectively hold hostage many of the plaintiffs who are sick, and the limited funds available for settlement payments for future claimants are exhausted. There is little debate over the need to do something about asbestos litigation; there is much disagreement, however, over the solution.

USCC 55573

The U.S. Chamber is working to unify the business community in support of federal legislation to deal with the asbestos litigation crisis.

Sources for additional information: www.uschamber.com; www.legalreformnow.com; www.overlawyered.com; www.atra.org; www.rand.org.

Chamber contact: Linda Kelly, U.S. Chamber Institute for Legal Reform, lkelly@uschamber.com.

At the time of publication, the class action reform bill passed both the House and the Senate and was signed into law by President Bush.

There is a class action crisis in our state courts. A 1999 Federalist Society survey indicated that the number of state court class actions pending against surveyed companies had increased by more than a thousand percent from 1988 to 1998. The concentration of these actions in state courts is no accident. Class action attorneys have discovered that state courts are often lax in their requirements for class certification, so they are more likely to choose state courts than federal courts as a forum. Once in state court, defendants often face insurmountable obstacles to moving the action to federal court and may find that the law applied to the action is the least favorable to their case, leaving them with few options but to settle the claim.

Class action certification is a formidable weapon in lawsuits against defendant corporations for several other reasons. Although the amount to which an individual claimant is entitled may be relatively small, when multiplied by hundreds or even thousands of class members, an adverse judgment could result in a defendant company being liable for damages in the billions of dollars. Also, it is not uncommon for class actions to be filed on behalf of parties who have not expressed an interest in pursuing a lawsuit against the defendant company. Although class action may be justifiable and even necessary to redress valid complaints of irresponsible corporate action, this mechanism is being increasingly misused.

The U.S. Chamber is leading a group of businesses, associations, and organizations—the Coalition for Class Action Reform—to help pass federal legislation to reform the class action system, including making it easier to move class actions to federal court. During the 108th Congress, the U.S. House of Representatives approved the legislation and the U.S. Senate held several unsuccessful cloture votes on the measure.

Sources for additional information: www.uschamber.com; www.legalreformnow.com; www.manhattan-institute.org/ html/clp.htm; www.overlawyered.com; www.atra.org; www.rand.org.

Chamber contact: Matt Webb, U.S. Chamber Institute for Legal Reform, mwebb@uschamber.com.

Congress passed the most sweeping class-action-related reforms ever enacted: the Private Securities Litigation Reform Act (PSLRA) in 1995 and the Uniform Standards Act (UNS) in 1998. Both statutes focused on meritless litigation under the securities laws. Despite the fact that both Acts were passed with overwhelming bipartisan majorities (the PSLRA was one of only two successful Clinton veto overrides), the recent wave of corporate scandals has given increased ammunition to the plaintiffs' bar and consumer groups calling for the repeal of those statutes.

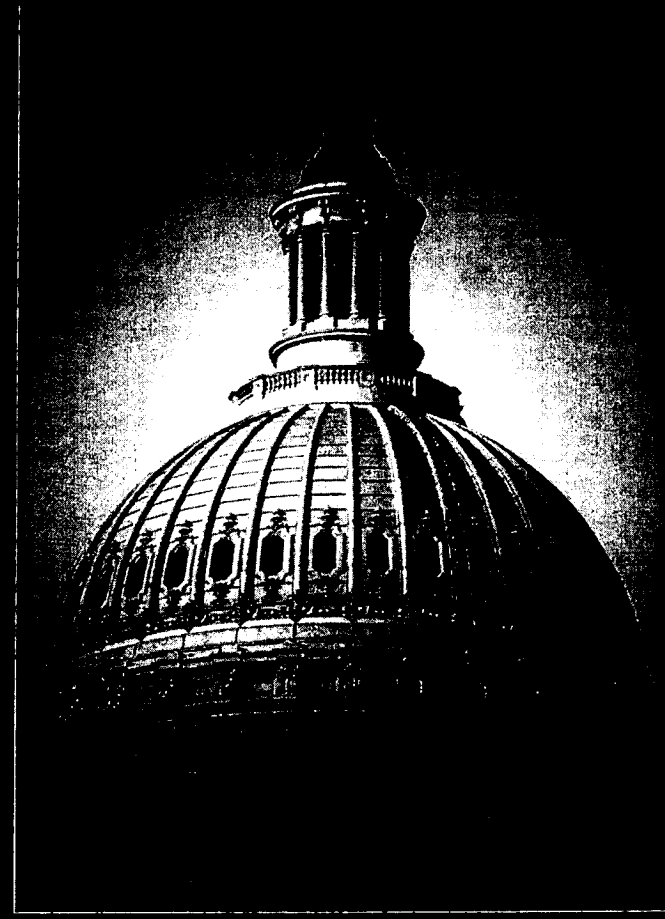
Although the reforms promulgated in the PSLRA and UNS were significant, they are not without problems. The PSLRA, for example, established a heightened standard for pleading securities fraud, but the statutory language is ambiguous and the courts of appeal have been badly divided on application of the pleading standard as well as on the question of whether the PSLRA affected the scienter (i.e., state of mind) standard under the securities laws. In addition, the sheer size of potential damage awards in modern securities cases can force many defendants to settle these cases, whether or not true liability exists, because continuing with the litigation would be too risky and would turn into a "bet the company" proposition.

The U.S. Chamber will continue to oppose legislation that would undo the protections gained under the PSLRA and the UNS and will seek to clarify those statutes.

Sources for further information: www.uschamber.com; www.legalreformnow.com; http://securities.stanford.edu.

Chamber contact: Matt Webb, U.S. Chamber Institute for Legal Reform, mwebb@uschamber.com.

USCC 55578



INTERNATIONAL POLICY/FREE TRADE

USCC 55579

At a time when U.S. companies are increasingly engaged in the global economy, U.S. tax policies are making it very difficult for Americans to work overseas. Americans working abroad must pay U.S. income tax on income, benefits, allowances, and overseas adjustments. No other major industrial country taxes its citizens working overseas on their foreign-earned income.

These policies put U.S. companies and employees working overseas at a significant competitive disadvantage, because U.S. employers must pay American workers abroad more than they would pay other nationals. Many employers cannot take on this additional burden—even if their American workers have better professional qualifications.

One of the very few ways of leveling the international playing field is the Section 911 exclusion, which enhances the competitiveness of American workers and U.S. companies in foreign markets. Section 911 provides a foreign-earned income exclusion annually to Americans working overseas, allowing them to compete effectively against comparably qualified non-Americans, who are paying no taxes on income earned abroad.

Unfortunately, Congress has sought on several occasions in recent years to increase tax revenue by eliminating the Section 911 exclusion, most recently as part of the FSC/ETI legislation signed into law in 2004. While this effort was turned back, congressional opponents of the exclusion are likely to try again.

Moreover, the Section 911 exclusion continues to lose ground to inflation. Today, in real dollars, it is 45 percent below its 1983 level and is projected to continue falling until 2007, when it is expected to stabilize at approximately $65,150 in 1999 dollars. Viewed from the perspective of purchasing power, the value of the exclusion will have plummeted in real dollars since 1983 by nearly $70,000 (1999 dollars).

Chamber contact: International Policy Division at 202-463-5460.

Over the past few decades, U.S. policymakers in Congress and the executive branch have repeatedly imposed unilateral economic sanctions on a variety of countries for foreign policy purposes. These sanctions have taken the form of import bans, export controls, restrictions on U.S. investment and expatriate activity overseas, and financial controls. All too often, they have been undertaken for ill-defined purposes or with little consideration of their impact. Rather than modifying the behavior of those countries, the sanctions have often damaged U.S. economic interests at home and overseas. The vacuum created by unilateral sanctions is generally filled by our trade competitors, particularly our allies.

Sanctions are generally imposed with little understanding of or concern for their domestic economic consequences. To be even marginally successful, economic sanctions must be multilateral; but because all countries define their foreign policy interests differently, there is rarely a consensus in favor of sanctions. The United States cannot afford to continue a policy of unilateralism when it comes to economic sanctions.

Many people in the executive branch and Congress view U.S. economic interests as divorced from U.S. foreign relations and security interests; in reality, they are inextricably intertwined. In today's increasingly competitive global economy, U.S. companies are rarely the predominant suppliers of goods and technology. As technology has become more diffuse, the cumulative effect on the U.S. domestic economy of markets lost simply to symbolically distance our country from another country's behavior is a luxury the United States can no longer afford.

In recent years, Congress has demonstrated increasing support for legislation to reform U.S. sanctions policy and, in some cases, lift unilateral sanctions outright. There are as yet not enough votes to send meaningful sanctions reform to the president for his signature.

Source for additional information: USA*Engage anti-unilateral sanctions coalition Web site (www.usaengage.org).

Chamber contact: International Policy Division at 202-463-5460.

Since presidential Trade Promotion Authority (TPA) was restored in 2002, the United States has embarked on an unprecedented effort to open foreign markets to U.S. exports by expanding its network of free trade agreements (FTAs). In 2003 and 2004, negotiations for FTAs with Chile, Singapore, Australia, and Morocco were concluded and subsequently approved by Congress. The latter two will come into force in 2005; the FTAs with Chile and Singapore are already generating impressive results. U.S. exports to Chile, for example, will increase by an estimated 30 percent in the first year of the agreement's implementation.

In 2005, Congress will vote on the U.S.–Central America–Dominican Republic FTA (DR-CAFTA), which is the largest FTA in a decade in terms of the volume of trade it will liberalize. Chamber economic impact studies indicate that DR-CAFTA will bring substantial economic benefits to the United States. The DR-CAFTA countries represent the largest export market for Florida, to cite one example; the agreement is expected to generate nearly 7,000 new jobs and a billion dollars in new economic growth in its first year of implementation in that state alone.

Elsewhere, negotiations have been concluded for an FTA with Bahrain, an important U.S. ally. The United States is currently negotiating FTAs with nine other countries, of which Thailand and Colombia are the markets of greatest interest to Chamber members. Finally, the United States is negotiating with 33 other Western Hemisphere nations to create a Free Trade Area of the Americas (FTAA), although negotiations have slowed recently as a result of diverging views over the agreement's scope.

FTAs benefit U.S. businesses, workers, and consumers in significant ways. These agreements do much more to open foreign markets to U.S. exporters and investors than vice versa, because the U.S. marketplace is already one of the most open in the world. With the European Union joining East Asian and Latin American countries in negotiating dozens of FTAs, U.S. firms run the risk of being placed at a competitive disadvantage unless the United States moves forward aggressively with its own FTAs.

Nonetheless, it is critical that FTAs meet certain criteria if they are to maximize their potential for business opportunities, economic growth, and new jobs. First, FTAs must be comprehensive, with all goods and services placed on the negotiating table, including sensitive products. Seeking exclusions for particular commodities from the beginning can undermine the commercial value of an FTA. Second, FTAs must be ambitious, with market-opening disciplines on services, investment, and intellectual property that go far beyond the relatively modest commitments made in the context of the World Trade Organization.

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The U.S. Chamber of Commerce is committed to rebranding global intellectual property (IP) theft and counterfeiting as crimes with serious consequences that put business, the economy, and consumers at risk. These crimes are not "victimless."

It is estimated that IP theft costs U.S. companies $250 billion annually and costs the global economy upwards of three quarters of a trillion dollars. The Chamber wants to help governments, businesses, and consumers recognize that effective IP laws and regulations and robust enforcement are key components of an attractive and competitive investment climate and are in the best interests of all economies, regardless of their level of development. IP theft is also a consumer health and safety issue: Pirated medicines and foods have claimed lives, and fake automotive and industrial components can cause serious accidents.

From a business perspective, adequate standards and effective enforcement of intellectual property on a global basis are critical to all knowledge- and data-based commerce. Innovation, particularly by smaller businesses, depends on the ability to obtain and enforce strong worldwide IP protections efficiently and cost-effectively. The advent of digital businesses poses new challenges to protecting and commercializing intellectual property.

As the leading producer and exporter of information-based goods—from motion pictures to databases to consumer brands—American business relies on a variety of international IP protection regimes and national IP enforcement mechanisms, including the World Trade Organization trade-related intellectual property (TRIPS) agreement and World Intellectual Property Organization (WIPO) treaties and protocols. Key IP issues include (1) TRIPS implementation and WTO accessions; (2) WIPO Internet and e-commerce treaties; and (3) counterfeiting and piracy.

The U.S. Chamber supports the full implementation of TRIPS obligations by all WTO members and opposes reopening, weakening, or otherwise undermining the existing TRIPS agreement in any new round. WTO accession by new members should imply full implementation of TRIPS on the date of accession, without transition. However, TRIPS should not be used to freeze in place limitations on market access for information products and services, such as motion picture distribution across borders. Comp-lementary market access initiatives should be undertaken on a bilateral, regional, and multilateral basis.

There is an acute need for an international mechanism to combat piracy on the Internet. Relevant WIPO treaties on digital commerce have yet to be ratified by a sufficient number of countries to enter into force. In addition, rapid innovation outpaces the antiquated procedures at many national IP agencies, rendering them unable to establish prompt and strong protections.

Sources for additional information: WTO Web site (www.wto.org); WIPO Web site (www.wipo.org); Office of the U.S. Trade Representative Web site (www.ustr.gov).

Chamber contact: International Policy Division at 202-463-5460.

Over the past 60 years, the United States has played the lead role in shaping a world trading system committed to fewer trade barriers and distortions. The momentum of this undertaking has been possible only because Americans have perceived that their interests are advanced in the process. In other words, Americans were willing to lead in the quest for open and expanding trade because they believed that free trade would also be fair.

However, "fair" has various definitions in U.S. trade laws. In the case of subsidized imports, the Commerce Department and the International Trade Commission may impose countervailing duties to offset the harm such imports cause to U.S. industries. Such remedies play a critical role in ensuring basic fairness. They not only arm U.S. negotiators with the carrots and sticks they need to conclude agreements but also bolster public confidence in the trading system and sustain a domestic political consensus for continuing global trade liberalization.

In the past decade, the United States has stepped up its decades-long effort to eliminate trade barriers worldwide, because the benefits of trade to the U.S. economy in an increasingly global marketplace are both demonstrable and significant. But this effort will succeed only if the American public is assured that its legitimate interests will be advanced in the process. The United States must take great pains to avoid protectionism in the guise of fairness.

U.S. trade remedy laws, including antidumping and countervailing duty laws, are subject to World Trade Organization scrutiny. It is not yet clear whether there will be a significant push in the 109th Congress to revise these laws.

Sources for additional information: U.S. Department of Commerce/International Trade Administration Web site (www.ita.doc.gov); U.S. International Trade Commission Web site (www.usitc.gov).

Chamber contact: International Policy Division at 202-463-5460.

After an eight-year lapse, the president signed trade promotion authority (TPA) into law as part of the Trade Act of 2002. With that authority, U.S. negotiators are crafting trade deals that knock down barriers to U.S. products and services overseas while guarding U.S. markets from unfair trade. Exports of goods and services now top $1 trillion annually and support approximately 20 million U.S. jobs. These jobs pay on average 13 percent to 16 percent more than comparable domestic jobs. Consumers benefit from expanding access to foreign markets as well.

In 2005, TPA will be up for a two-year extension through May 2007. President Bush has indicated that he will request the extension, which will be granted unless Congress approves a resolution of disapproval. The Chamber is a leader of the business community's broad-based effort to defeat any such resolution.

Using TPA, U.S. trade negotiators should focus on four key priorities in 2005:

- Exert leadership in the multilateral trade talks known as the Doha Development Agenda (see separate entry under "World Trade Organization"). Hammering out a consensus among the diverse and conflicting interests of the 148-member nations of the World Trade Organization (WTO) will not be easy, but TPA has created the tools to make U.S. leadership in this realm possible. With more than 95 percent of the world's consumers living outside our borders, a new global trade pact is critical to our economic future.

- Push for completion of additional free trade agreements (FTAs). (See separate entry on this topic.) With Congress expected to vote in 2005 on recently completed FTAs with Central America and Bahrain, the Chamber will lead an aggressive advocacy drive for their approval. The Chamber will also work to shape FTAs under negotiation, including those with Thailand and the Andean countries.

- Continue to implement new "template" bilateral trade agreements with Chile, Singapore, Australia, and Morocco. The early results of the FTAs with Chile and Singapore suggest that the Office of the U.S. Trade Representative has established

excellent standards for FTAs. Implementing these pacts sends a clear signal to countries around the world that the United States is back in the trade agreement arena.

- Vigorously enforce U.S. trade laws. U.S. trade laws have two core purposes: to protect U.S. business from unfairly traded goods and services and to open foreign markets to U.S. goods and services. Politically, it is impossible to secure public support for opening foreign markets (which necessarily entails opening the U.S. market) unless we ensure that foreign goods and services are entering the U.S. market fairly.

Source for further information: Office of the U.S. Trade Representative Web site (www.ustr.gov).

Chamber contact: International Policy Division at 202-463-5460.

When the United States took the lead in launching the Uruguay Round of multilateral trade negotiations that resulted in the World Trade Organization (WTO) agreement, it recognized that the nondiscriminatory worldwide reduction in trade barriers and the application of new trade rules would bring substantial benefits for U.S. companies and their workers.

Currently, the Doha Development Agenda, a similar effort to lower trade barriers through multilateral negotiations, is advancing under the aegis of the WTO. Key U.S. objectives in these global negotiations include reducing tariffs on industrial and consumer goods, opening foreign markets to U.S. agricultural exports, imposing new disciplines on countries that heavily subsidize their farm sectors (especially the European Union and Japan), and creating a more open, rules-based framework for the international provision of services. The Doha negotiations were launched in 2001, and Chamber analysts believe they will be completed in time to allow approval by Congress before the expiration of trade promotion authority on May 31, 2007.

While the WTO provides a forum for multilateral negotiations to reduce trade barriers, it also establishes and enforces rules for the global trading system. Like other WTO signatories, the United States is subject to WTO disciplines on its own "market access" trade laws, such as Section 301. Although the WTO agreement did not require material changes in U.S. trade law per se, it did establish for the first time a multilateral "review" process for the application of U.S. (and other nations') trade laws to remedy unfair or restrictive international trade practices. Such reviews require U.S and other authorities to consider multilateral reactions to any unilateral trade remedy actions they might take.

The United States has benefited from this new discipline, prevailing in a disproportionate share of disputes subject to these processes. Still, such reviews of unilateral action have reduced the amount of leverage the United States and other individual nations can bring to bear on their competitors to open their markets.

While Congress has attempted to recoup lost leverage through various statutory means, the application of global disciplines all but guarantees a challenge to these means when they are employed.

Source for additional information: Office of the U.S. Trade Representative Web site (www.ustr.gov).

Chamber contact: International Policy Division at 202-463-5460.

USCC 55590

SECURING AMERICA'S FUTURE/TECHNOLOGY

USCC 55591

The U.S. Chamber's objective is to maintain the position of American business as a leader in biotechnology and promote the potential applications of biotechnology in food, medicine, agriculture, textiles, and other products.

Through innovation in agriculture, medicine, manufacturing, and food production and safety, biotechnology is having a revolutionary effect on our quality of life. To obtain public acceptance of biotechnology products, the business community must promote rigorous, science-based, and nationally uniform federal regulations that ensure environmental protection and a safe food supply.

Although most medical applications of biotechnology—such as the development of new pharmaceuticals—are warmly accepted, controversy about biotechnology uses in food is rampant in Europe and Asia. Areas of dispute include the safety and allergenicity of genetically modified food ingredients, labeling of food containing genetically modified organisms, environmental contamination, loss of biodiversity, and the impact of biotechnology on international trade. Many of these issues are playing out in negotiations surrounding the implementation of the Convention on Biological Diversity (CBD), an international treaty designed to protect the world's biodiversity, and a sub-agreement to the treaty, the Biosafety Protocol (BSP), designed to govern the international trade of commodities containing any viable genetically engineered material. Although the treaty is technically in effect in most of the international community, many of its most important provisions, such as liability for damage to biodiversity, remain unresolved. Because the United States has not ratified the treaty, its ability to participate in these negotiations is severely restricted. The U.S. Chamber must facilitate industry's efforts to weigh in on these important issues through communication with U.S. and foreign government officials.

What transpires in the international trade arena could adversely affect the ability of the United States to move and trade goods. Controversies abroad may spread into the United States, as evidenced by recent anti-biotechnology initiatives in Oregon, California, and Vermont. The U.S. Chamber will continue to vehemently oppose the propaganda of anti-biotechnology activists.

The U.S. Chamber will do the following:

- Monitor negotiations related to implementation of the CBD and BSP, which are likely to affect biotechnology regulations and legislation in the United States and abroad.
- Provide comments, testimony, and policy recommendations on biotechnology regulations and legislation to the U.S. government and international standard-setting bodies.
- Use the U.S. Chamber's Technology Policy Committee to address timely technology concerns.
- Host high-profile events that raise awareness and provide education about the benefits of biotechnology.

Chamber contact: Food and Biotechnology at 202-463-5657 or Kenny Peskin at kpeskin@uschamber.com.

The U.S. Chamber's objective is to advocate for the enactment of a comprehensive national broadband policy.

Broadband applications and services have the power to transform the American economy by spurring investment and innovation in e-commerce, education, health care, entertainment, government, and almost every other sector. The U.S. Chamber of Commerce believes that the nation's position as a leader in technology and innovation depends on the establishment of a clearly defined vision, coupled with a commitment, both public and private, to invest in future infrastructure and applications of broadband technologies. Specifically, the U.S. Chamber advocates for the following:

- Broadband—Increased demand for broadband is critical to the development of new applications and services. To stimulate the nationwide demand for broadband, the U.S. Chamber will educate its membership about the benefits that broadband holds for business. Together, government and business should make a concerted effort to promote awareness of broadband products, applications, and services.

- Right-of-way procedures—Current right-of-way procedures often discourage companies from investing in new broadband infrastructure. The U.S. Chamber maintains that the federal government should streamline right-of-way procedures at the federal, state, and local levels.

- Spectrum allocation and management—Businesses and consumers increasingly rely on wireless devices, such as cell phones, which require spectrum to deliver content. The artificial scarcity of spectrum deters companies from deploying new wireless technologies. The federal government should develop a comprehensive, unified national spectrum management strategy designed to reduce the artificial scarcity.

The U.S. Chamber will do the following:

- Build a grassroots coalition of technology companies, business users of every size and sector, trade associations, and local chambers of commerce.

- **Educate consumers and businesses about the benefits of broadband.**

- Urge Congress and the administration to pass legislation during the 109th Congress.

Chamber contact: Technology Policy at 202-463-5949 or Jason Goldman at jgoldman@uschamber.com.

Digital Intellectual Property

The U.S. Chamber's objective is to promote strong digital intellectual property protections for businesses.

Digital content is essential for broadband and digital television (DTV) to flourish. Consumers want to download movies and music, access news articles and databases, and watch DTV. However, without adequate digital copyright protections, content producers will hesitate to release their products digitally. The U.S. Chamber of Commerce advocates for the protection of digital intellectual property. Through membership education and by hosting forums with lawmakers, the Chamber has brought this issue to the forefront of its technology agenda and will aggressively promote it during the 109th Congress. The U.S. Chamber supports full funding for the U.S. Patent and Trademark Office to ensure that it can implement necessary reforms aimed at promoting e-commerce.

The U.S. Chamber promotes market-based and technological solutions to digital intellectual property protection. These solutions should avoid costly government regulations and incorporate the fair use of content by citizens. Policies that balance copyright protection with fair use will spur broadband deployment by allowing for the development of enhanced Internet services.

Investment and innovation rest on strong intellectual property protection for businesses. Accordingly, the U.S. Chamber opposes the ability of state entities, such as state universities, to use their constitutional protection from lawsuits to infringe freely upon the intellectual property of others. By using sovereign immunity in this manner, states collectively discourage the research and development of new Internet-based products and services. The U.S. Chamber supports a comprehensive federal policy that protects intellectual property from all types of infringement.

The U.S. Chamber will do the following:

- Fight for robust enforcement of intellectual property laws domestically and abroad.
- Promote industry solutions to new copyright protection challenges.

- **Support full funding for the U.S. Patent and Trademark Office.**
- Urge Congress to pass legislation to protect content owners from misappropriations of content by state entities.

Chamber contact: Technology Policy at 202-463-5949 or Jason Goldman at jgoldman@uschamber.com.

The U.S. Chamber's objective is to support policies that advance the growth of e-commerce while respecting consumers' privacy.

E-commerce thrives as consumers use the Internet to shop and conduct research, and companies use it to purchase goods and services. For e-commerce to continue growing, electronic retailers will require assurances that barriers to doing business are minimal and any regulations that do exist are predictable and consistent. Disparate laws and regulations among jurisdictions can increase the costs for companies to provide goods to consumers and prevent new ventures from forming.

The U.S. Chamber will address specific issues regarding e-commerce:

- Privacy—Policymakers are engaged in a debate about the appropriate use of a consumer's personal information. During the past several years, this debate has encompassed not only how information is collected and handled through the Internet but also how the entire business community uses personally identifiable information. The U.S. Chamber supports policies that protect consumers' privacy without unduly burdening American businesses.

- Spam—Unsolicited bulk commercial e-mail (spam) undermines consumers' confidence in e-commerce, and having to sort through and delete spam hinders the productivity and efficiency gains that e-mail provides. To combat this nuisance, the U.S. Chamber supported legislation that would prohibit pornographic, fraudulent, and misleading spam. The U.S. Chamber also joined the Federal Trade Commission (FTC) in working with businesses to stop the proliferation of spam and respect user opt-out preferences. The U.S. Chamber worked to craft new regulations under the CAN-SPAM Act of 2003 (P.L. 108-187), which will achieve these goals without hindering e-commerce.

The U.S. Chamber will do the following:

- Continue to oppose overly burdensome regulations that would stifle the growth of e-commerce.

- **Hold forums with policymakers at the federal and state levels about the complexities of the privacy issue and examine the** benefits of a uniform national standard on the collection and use of personally identifiable information.

- Organize the online community to create industry solutions to meet the increasing problem of spam and spyware.

- Support FTC reforms that encourage businesses to deploy e-commerce services.

Chamber contact: Mike Zaneis, Congressional and Public Affairs at 202-822-2475 or mzaneis@uschamber.com.

Global Anti-Counterfeiting and Piracy

The U.S. Chamber of Commerce is committed to thwarting the growing global threat of counterfeiting and piracy. These are crimes with serious consequences that put business, the economy, and consumers at risk.

Last year alone, the World Customs Organization and Interpol estimate that the global trade in illegitimate goods increased to more than $600 billion—and this figure continues to grow. The FBI estimates that counterfeiting and intellectual property (IP) theft costs U.S. companies $200 billion–$250 billion each year. More alarming, these crimes are a growing threat to public health and safety—from exploding batteries to counterfeit pharmaceuticals, consumers are facing mounting risks.

The Chamber is implementing a three-part strategy to combat counterfeiting and piracy:

- Educate businesses, media, and lawmakers on the growing economic threat of counterfeiting in the United States.
- Strengthen our intellectual property laws and work with manufacturers, retailers, and law enforcement to disrupt the counterfeiting networks' ability to use legitimate distribution channels in the United States.
- Implement country-specific efforts to combat IP theft in priority countries—starting with China and Brazil and moving on to Korea, India, and Russia.

In 2005, the Chamber will leverage its strategy to bring business together to collectively address the government's STOP (Strategy Targeting Organized Piracy) initiative, closing loopholes through legislation, increasing enforcement efforts at our borders, and encouraging prosecution of counterfeiters.

Chamber contact: Randy Skoglund, National Chamber Foundation at 202-463-5500.

USCC 55600

Support of the Guard and Reserve

In this time of increased deployment of U.S. troops around the world, the U.S. Chamber of Commerce recognizes that the strong relationship between employers and National Guard and Reserve forces is more important than ever. The Chamber urges the Department of Defense (DoD) to work with the private sector to develop strategies to enhance the predictability of mobilizations and demobilizations of the National Guard and Reserve. By doing so, the military will not only recognize the important role of the private sector but also continue to build employer support for our military.

The U.S. Chamber of Commerce is committed to working with Capitol Hill and DoD policymakers to build a predictable employment structure. The predictable deployment of the Guard and Reserve is the key to maintaining and building business support.

The Chamber will continue to build on the strong working relationship between employers and the Guard and Reserve community. To help employers understand how the DoD intends to use the Reserve component in the future, the Chamber will continue working with the Employer Support of the Guard and Reserve office and other organizations to disseminate the Reserve component message to local and regional employers.

Chamber contact: Andrew Howell, Homeland Security at 202-463-3100.

USCC 55601

The U.S. Chamber of Commerce supports a homeland security policy that not only safeguards our nation but also ensures our citizens' mobility, freedom, and way of life. If terrorism or the threat of it chokes off our ability to move people and goods in a global economy, we will pay a tremendous price in growth and prosperity.

In 2003, the U.S. Chamber established a Homeland Security Policy Task Force to offer members a forum to shape the Chamber's efforts to increase homeland security and ensure the openness and mobility that are critical to our economy. This message has been, and will continue to be, advanced through congressional testimony, regulatory filings, meetings with Department of Homeland Security (DHS) officials, media outreach, and public forums with elected officials and members of the business community.

Over the next year, the U.S. Chamber will continue to support policies that do the following:

- Measurably enhance security while maintaining the openness and mobility that are critical to our economy.
- Enhance public-private partnerships in homeland security policymaking, given that 85 percent of our nation's critical infrastructure is owned or operated by the private sector.
- Promote greater sharing of threat and vulnerability information between federal, state, and local governments and the private sector, while giving companies sufficient legal and regulatory protection.
- Create incentives that promote market-based, nonregulatory solutions to homeland security challenges.

Chamber contact: Andrew Howell, Homeland Security at 202-463-3100.

The nation's transportation system essentially funds itself through various user-financed trust funds and should be self-sufficient. Unfortunately, these funds have not always been fully used for their intended purpose, depriving the nation's infrastructure of much-needed maintenance and improvement.

In June 1998, the Transportation Equity Act for the 21st Century (TEA-21) was signed into law, reaffirming the necessity of an improved surface transportation infrastructure to our nation's economic prosperity. TEA-21 provided for a 44 percent increase in federal highway and public transportation systems by separating or "walling off" the annual user fee revenues of the Highway Trust Fund (HTF). This provision required full investment of all HTF revenues for maintenance and improvements to the surface transportation system. In April 2000, the Aviation Investment Reform Act for the 21st Century (AIR-21) was enacted; it has provided a significant boost to our nation's aviation infrastructure over the past three years.

In the 109th Congress, three major transportation funding measures must be reauthorized: TEA-21, AIR-21, and the Water Resources Development Act. In each funding authorization measure, efforts will be made to ensure the integrity of the user fee system and to continue to increase investments to meet the nation's needs.

A well-functioning transportation infrastructure is critical to our continued economic growth, international competitiveness, safety, and environmental stewardship. Congress should use all available resources to invest in U.S. transportation systems. At the same time, Congress must enact provisions that accelerate project delivery by reducing redundancies in the project planning and approval process. Increasing investment and accelerating project delivery will allow much-needed transportation projects to be completed, alleviating congestion and improving the quality of life for citizens.

Chamber contact: Ed Mortimer, Congressional and Public Affairs at 202-463-5600.

The U.S. Chamber's *Travel and Tourism Across America* initiative is focused on leveraging partnerships and building national grassroots support to revitalize growth in all sectors of the travel and tourism industry.

The U.S. Chamber is committed to revitalizing travel and tourism, a critical component of our nation's economy. Travel and tourism is a $528.5 billion industry that generates $93.2 billion a year in tax revenue and pays out $157 billion in payroll. More than 12 percent of the civilian labor force is employed directly or indirectly in the industry.

Travel and Tourism Across America will focus on the following action items in 2005:

- Educate businesses, media, and lawmakers about the economic benefits generated by the travel and tourism industry. *Travel and Tourism Across America* will enhance its Web site and Internet-based communications and host five regional forums and one national summit on travel and tourism.
- Develop a national grassroots network to mobilize support for the industry when travel- and tourism-related issues and policies arise in Washington. The recruitment of grassroots activists will take place through our regional forums, partnerships formed with industry associations, continued outreach to the U.S. Chamber's federation of state and local chambers, an enhanced media campaign, and advanced Web-based capabilities.
- Make our nation's aviation crisis a priority for Congress and the administration in 2005.

The Chamber's agenda includes:

- Reducing the burden of unjustified taxes, fees, and regulations.
- Designing and building an airport and air traffic management system with the capacity to safely and efficiently handle much greater volumes of traffic.
- Ensuring that the United States retains global leadership in aviation.

Chamber Contact: Scott Griset, Travel and Tourism at 202-463-5500.

The U.S. Chamber's objective is to support policies to ensure that employers have a skilled and educated workforce.

Business relies on the skills of its workforce as a critical factor in remaining competitive. The 109th Congress will be considering four major workforce-related laws: the Workforce Investment Act; the Carl D. Perkins Vocational and Technical Education Act; the Higher Education Act; and the Welfare Reform Act. These laws should respond in a comprehensive way to fulfill the need for a high-quality workforce and to enhance employers' ability to hire qualified workers and retain them in a labor market with an increasing demand for skills.

Workforce development that ensures that workers meet basic skill requirements and have skills appropriate to industry standards is a top priority for chambers of commerce and businesses nationwide. Eighty-five percent of today's jobs are classified as skilled, and a majority of new jobs will require an associate's degree. With 80 percent of new, self-supporting jobs requiring some postsecondary education or training, it is alarming that 60 million to 65 million working Americans have no postsecondary education, degree, or credential of any kind. About 10 percent of our workforce has not even finished high school. Businesses will be unable to compete in a global market unless they have more workers with greater skills. This situation is exacerbated by the rate at which technology is changing the workplace and by the potential retirement of baby boomers.

Business drives the economy and must also be the driver of education and workforce policy. The business community must be prepared to address confusing and duplicative federal workforce development programs, which historically have not considered businesses as customers. Business voices are needed at the national, state, and local levels as these polices are formulated. The U.S. Chamber encourages strong involvement of local chambers of commerce and businesses in the review and oversight of the publicly funded systems supported by these workforce laws. At the national level, the U.S. Chamber's Center for Workforce Preparation (CWP) is the voice on these issues. Chambers of commerce at the state and local levels must

ensure that the views of small and medium-sized businesses are heard on these critical policy decisions.

CWP partners with chambers of commerce across the country to strengthen their ability to have an impact on workforce issues. CWP promotes successful workforce development strategies that meet businesses' needs for a skilled workforce. Local chambers have become active leaders in making workforce development a key factor for economic growth.

Sources for additional information: Department of Labor (www.dol.gov); Department of Education (www.ed.gov).

Chamber contact: Center for Workforce Preparation at 202-463-5525.

USCC 55606

Tax Reduction/ Tax Reform

USCC 55607

Originally designed to ensure that all taxpayers pay at least a minimum amount of taxes, the alternative minimum tax (AMT) unfairly penalizes businesses that invest heavily in plants, machinery, equipment, and other assets.

The AMT significantly increases the cost of capital and discourages investment in productivity-enhancing assets by negating many of the capital formation incentives provided under the "regular" tax system—most notably, accelerated depreciation. To make matters worse, many capital-intensive businesses have been perpetually trapped in the AMT system, unable to use their suspended AMT credits.

The AMT is extremely complex and burdensome. Even businesses not subject to the tax must go through the computations to determine whether they are liable for it. While the Taxpayer Relief Act of 1997 (P.L. 105-34) exempted "small business corporations" from the AMT, larger corporations and many individuals may not be exempt. Additionally, while recent legislation offered modest increases to the exemption amounts for individuals, more and more middle-income individuals are vulnerable to the AMT.

Reforming the AMT would spur capital investment in the business community, thereby creating jobs. The U.S. Chamber supports measures to simplify and reduce the scope of the corporate and individual AMT, while ultimately working for full repeal of both.

Chamber contact: Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com; Jim Zelasko, Economic Policy at 202-463-5721 or jzelasko@uschamber.com.

The landmark Economic Growth and Tax Relief Act of 2001 (Public Law 107-16)—also known as the $1.35 trillion Bush Tax Cut I package—included significant individual income tax rate reductions, lower taxes for married couples, increased child credit, increased retirement plan limits and portability, phase-down and repeal of the estate tax, and reduction of the gift tax. Because of Senate budget rules, however, the Act's provisions expire at the end of 2010, and the tax law reverts to preenactment levels.

The Job Creation and Worker Assistance Act of 2002 (Public Law 107-147)—Bush Tax Cut II—included a special "bonus" depreciation allowance for capital assets, extended the net operating loss carryback period, and extended certain expiring tax provisions.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27)—Bush Tax Cut III—included acceleration of the income tax rate reductions; temporary expansion of the child credit, personal alternative minimum tax exemptions, bonus depreciation, and Section 179 "small business" asset expensing and provided temporary reductions in taxes on dividends and capital gains.

A leading priority for the U.S. Chamber during the 109th Congress is to accelerate or modify provisions of the Bush tax cuts to improve their stimulative and growth-promoting effects and make them permanent.

Chamber contacts: Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com; Martin Regalia, Economic Policy at 202-463-5620 or mregalia@uschamber.com.

Many economists believe that reducing or eliminating the tax on gains from the sale of capital assets and on dividends paid from corporate earnings will stimulate economic growth by promoting capital formation and mobility.

The 1997 Taxpayer Relief Act (Public Law 105-34) reduced the maximum tax rate for long-term capital gains from 28 percent to 20 percent (10 percent for those in the 15 percent income tax bracket) while increasing the holding period for such gains from 12 to 18 months. The 1998 Internal Revenue Service reform bill reduced this holding period to 12 months.

The 1997 Act also allowed married couples to exclude up to $500,000 of capital gains on the sale of their principal residences every two years. Single filers may exclude up to $250,000 of such capital gains.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) reduced the maximum individual income tax rates on capital gains and dividend income to 15 percent, effective through 2008.

The U.S. Chamber supports further reform in the capital gains tax. Further lowering the capital gains and dividend income tax rates, and making these cuts permanent, will spur investment activity, create jobs, and expand the overall economy, benefiting individuals of all income levels.

Chamber contact: Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com; Jim Zelasko, Economic Policy at 202-463-5721 or jzelasko@uschamber.com.

The Chamber has repeatedly stressed the fact that the approximately 17,000 public companies in the United States are the most regulated, audited, and transparent companies in the world. The vast majority of these companies conduct their business activities according to the highest standards of honesty and integrity. The business community is largely responsible for generating our nation's $10.8 trillion gross domestic product, a 40 percent rise in median income over the past decade, and a level of broad-based prosperity that has enabled two-thirds of American families to own their own homes.

As the U.S. Chamber works to preserve our free economic system and protect the interests of honest companies and hardworking Americans, it also deplores the episodes of corporate misconduct that have come to light. This inexcusable and unethical behavior has undercut confidence in business and the markets—helping to drive down stock prices and deplete the retirement savings of American families. The Chamber seeks to protect business by supporting sensible reforms needed to restore confidence and end uncertainty while opposing policies that would damage productivity and competitiveness.

The Chamber is implementing a three-part strategy to defend the business community against the overreaching and overly aggressive corporate governance regulations and practices that threaten our nation's economic vitality:

- Develop the research and data to challenge those who are attacking the business community. In 2005, this will include issuing a study in partnership with the RAND Corporation on the future of the auditing profession and a study to quantify and explain the financial management time costs of implementing Sarbanes-Oxley's Section 404.

- Push back on the Securities and Exchange Commission (SEC) and other capital markets regulators by opposing unjustified rules and regulations. This effort includes opposing the SEC's proposed Shareholder Access Rule, SEC enforcement overreach, Justice Department guidelines overturning attorney-client privilege for companies, mandatory stock option expensing, the SEC's proposed regulations for the mutual fund industry, the

SEC's efforts to regulate the hedge fund industry, and Public Company Accounting Oversight Board auditing restrictions.

- Oppose other parties—such as unions, public pension funds, and the trial bar—that are jumping on the corporate governance bandwagon, either for financial gain or to advance a special-interest agenda. This effort includes opposing union and public pension funds' "withhold vote" campaigns, exposing the agenda and conflicts of interest of Institutional Shareholder Services (ISS), and promoting the Institute for Legal Reform initiative to address the growing wave of securities-based class action litigation.

Chamber contact: David Hirschmann, National Chamber Foundation at 202-463-5500 or dhirschm@uschamber.com.

Many Americans believe that the current income tax system is overly complex and extremely burdensome, excessively taxes personal and business income, favors special interest groups, and fails to promote saving and investment. Several alternative tax system proposals have been introduced in Congress, including those that would implement a flat tax, savings-exempt income tax, national retail sales tax, and value-added tax. These and other proposals will likely be analyzed and debated further during the 109th Congress, especially in light of President Bush's plan to create a Bipartisan Advisory Panel on Tax Reform to consider the issue.

Although currently favoring no particular alternative tax system proposal, the U.S. Chamber will continue to study the issue and urge Congress to end the current tax system's bias against saving and investment and reduce the system's administrative burdens and enormous compliance costs. A simpler, fairer, and less burdensome tax system that rewards saving and investment is crucial to extending the nation's productivity increases, which have rewarded us with sustained economic expansion, wage growth, and a higher standard of living.

Chamber contacts: Martin Regalia, Economic Policy at 202-463-5620 or mregalia@uschamber.com; Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com.

Permanent repeal of the estate tax ("death tax") is a priority. The current estate tax system can deplete the estates of those who have saved for their entire lives, force family businesses to liquidate and lay off workers, and motivate people to make financial decisions for estate tax purposes rather than for business or investment reasons.

Family-owned businesses should not be punished because they are successful or because their owners die. The United States is the land of opportunity, encouraging free enterprise and rewarding entrepreneurs. The estate and gift taxes run contrary to this basic philosophy.

The Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) phases down the estate tax through 2009 and fully repeals it in 2010. Because of Senate budget rules, however, the Act expires at the end of 2010, and the estate tax comes back into full bloom starting in 2011.

A priority for the U.S. Chamber during the 109th Congress is to make the Bush tax cuts permanent, especially the provisions eliminating the estate tax.

Source for additional information: Kill the Death Tax (www.deathtax.com).

Chamber contact: Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com; Jim Zelasko, Economic Policy at 202-463-5721 or jzelasko@uschamber.com.

USCC 55614

The Federal Unemployment Tax Act (FUTA) was passed in 1939 to guarantee financing for a national employment security system. The idea was for employers to pay the costs of administering an unemployment compensation and national job placement system. In return, employers would receive assistance in recruiting new workers and the unemployed would be able to find jobs more quickly.

The current maximum tax imposed is at a rate of 6.2 percent on the first $7,000 paid annually by employers to each employee, including the "temporary" surtax of 0.2 percent that was added in 1976 and extended through 2007.

The U.S. Chamber believes it is time to end the "temporary" FUTA surtax and stop all attempts to collect the FUTA tax on an accelerated payment schedule.

It is also time to take a closer look at the system to determine whether it is working properly, whether the federal government is collecting an appropriate amount of money from employers, whether claimants are receiving adequate benefits, and whether the states are receiving a sufficient return of dollars to fund services promised to workers and employers.

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USCC 55615

The jobs of many U.S. workers residing both inside and outside the United States are tied to the exports and foreign investments of U.S. businesses. Job growth is becoming increasingly dependent on expanded, competitive, and strong foreign trade. Our tax code restrains U.S. businesses from competing effectively abroad, which in turn restrains economic growth at home.

The tax rules that govern exports and the foreign investments and operations of U.S.-based multinational corporations are in need of revision. They represent a patchwork of extremely complex rules without an overall policy or purpose, and they impose barriers on U.S. companies seeking to compete in world markets. For U.S. businesses to be competitive in the expanding global market, our foreign tax rules must be simplified and made job- and business-friendly.

The U.S. Chamber has been actively opposing legislative attacks on U.S. multinational corporations that "invert" (reincorporate their foreign operations in foreign countries), in an attempt to create a level playing field with foreign multinational corporations. These attacks typically come in the form of tax legislation to penalize or inhibit the use of inversion or in nontax legislation to exclude inverted companies or related entities from participating in federal contracts. The Chamber advocates a long-overdue legislative overhaul of the U.S. tax code's antiquated and Byzantine foreign tax provisions, which prevent U.S. corporations from competing fairly with their foreign counterparts.

Chamber contacts: Martin Regalia, Economic Policy at 202-463-5620 or mregalia@uschamber.com; Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com.

The U.S. Chamber has a long-standing policy that the government should not produce goods and services for itself or others if acceptable privately owned and operated services are or can be made available for such purposes. The government saves billions of dollars when it partners with and invests in private sector companies. This in turn helps sustain our nation's competitive edge in industries such as defense, information technology, and management. Despite these benefits, the government continues to perform countless commercial services, even though business has repeatedly proved that it can provide these services at a lower price, with higher quality and a faster delivery schedule. The Chamber formed the Privatization and Procurement Council in October 2001 to promote and protect private sector involvement in the federal market and to maximize business prospects.

The federal government procures more than $250 billion annually, which amounts to tremendous opportunities for the private sector. In the post-9/11 world, the government is increasingly relying on the private sector to provide products and services to protect our homeland. Government must continue to streamline the acquisition process, ensure a fair and open procurement system, and rely more on the private sector for the goods and services it needs. Federal procurement requirements often create regulatory inflexibility and impose costly administrative burdens on industry with little value to taxpayers. The federal government must undertake more reforms that reduce government restrictions, eliminate government monopolies, and promote a level playing field for all interested firms.

The Chamber will continue to work to increase business opportunities and profitability for the private sector in the federal market by advocating a fair and efficient contracting process and limits on unfair government competition. The Chamber will also support streamlining the policies and procedures that govern outsourcing decisions and transferring more of the government's commercial activities to the private sector. Among the Chamber's priorities are ensuring that no government entity has special status in the procurement process and advocating comprehensive, governmentwide Federal Prison Industries reform legislation.

Chamber contact: Economic Policy at 202-463-5620.

Research and Experimentation Tax Credit

The research and experimentation (R&E) tax credit encourages technology-based companies to invest additional resources in the research, development, and testing of various products and services, which promotes both job creation and economic expansion. The credit, which has expired and been extended many times since its inception, was extended retroactively to July 1, 2004, and through December 31, 2005, by the Working Families Tax Relief Act of 2004 (Public Law 108-311).

The U.S. Chamber believes that the R&E tax credit should be permanently extended and expanded. It provides an incentive for firms to invest more in research and experimentation on their goods and services.

Permanently extending the R&E tax credit, rather than temporarily renewing it during the political bargaining process, would provide businesses with continuity and certainty. A permanent credit would allow businesses to make long-range planning decisions, which are key in many fields in which years of research are necessary before a product can be brought to the market.

The U.S. Chamber will continue to support efforts to expand the R&E tax credit and make it a permanent part of the tax law.

Chamber contact: Philip Beram, Economic Policy at 202-463-5620 or pberam@uschamber.com; Jim Zelasko, Economic Policy at 202-463-5721 or jzelasko@uschamber.com.

Revenue Scoring of Tax Proposals

When the government considers raising or cutting taxes, it produces official "scores" that estimate the resulting changes to federal revenues and the distribution of the tax burden. These estimates are very important in evaluating the desirability of proposed tax changes; therefore, it is vital that policymakers be provided with the most accurate and complete assessment of the likely effects of tax proposals.

Unfortunately, under the current scoring system, policymakers are not provided with the best information. Estimated revenue effects of proposed tax changes do not take into account most of the potential economic effects. The tax policy process, which is facilitated by the analyses conducted by the Joint Committee on Taxation (JCT) and the U.S. Treasury Department's Office of Tax Analysis (OTA), has been slow to change and closed to public scrutiny and peer review.

The U.S. Chamber supports reforms to increase the accuracy of tax revenue and distribution estimates and the transparency of the process, and the restructuring of federal tax policy organizations to increase accountability. As part of this improvement, we suggest that JCT and OTA produce "dynamic" revenue estimates that incorporate the real-world economic effects of suggested tax changes. The Chamber also advocates improving distributional analyses (which show the effects of tax changes by income group) by incorporating longer horizons and presenting results by both consumption and income levels.

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S corporations operate in every business sector in every state. More than 55 percent of all corporations file as S corporations; the vast majority are small businesses, which are responsible for most new jobs created each year.

Various tax relief provisions for S corporations were enacted in 1996 and in previous years, but additional reforms are needed.

The tax laws that govern these entities are too restrictive, complex, and burdensome. The current rules—adopted in 1958 when S corporations were created, and subsequently amended—are out of sync with modern economic realities; these rules impede the growth of small businesses and burden them with unnecessary administrative complexity.

The U.S. Chamber successfully advocated enactment of several S corporation reform and simplification provisions in the American Jobs Creation Act of 2004 (Public Law 108-357). The Chamber will continue to support efforts to improve and simplify S corporation tax rules.

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USCC 55620

Small business makes a distinctive and creative contribution to the American economy. For most Americans seeking economic independence, small business ownership offers the greatest opportunity. Small businesses produce a major share of business innovation. Their numbers make them the largest source of private employment and the most tangible local representation of the private enterprise system in America today. One barrier to entry into small business ownership is access to capital, especially long-term debt financing. The U.S. Chamber recognizes that ensuring the availability of financing to foster the growth and expansion of small businesses is in the best interest of the American economy.

The Chamber formed the Small Business Access to Capital Coalition in August 2002 to ensure that federal government–guaranteed lending programs that provide small businesses with access to capital, especially long-term capital, use the private sector to distribute funding adequately and cost-effectively to the small business community. The Chamber and the Coalition supported legislation in the 107th Congress to correct the federal government subsidy rate calculations that reduced the program funding level and overcharged for government-guaranteed loans to small businesses in FY 2003. In FY 2004, the Chamber again led legislative efforts that resulted in the lifting of restrictions on the government-guaranteed lending programs for small businesses.

The Chamber will continue to assess the adequacy of government programs that reduce the risk of private sector lending to small business. The Chamber will encourage passage of legislation to correct subsidy rate calculations and funding levels of existing programs for FY 2005 and FY 2006 to meet anticipated demand for these programs.

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USCC 55621

For 2002, businesses could expense up to $24,000 of equipment purchases. The U.S. Chamber led efforts to increase this allowance to $100,000 for tax years 2003–2005 through the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27); the increase was extended through 2007 by the American Jobs Creation Act of 2004 (Public Law 108-357). Businesses that invest more than the annual expensing allowance must recover the cost of their expenditures over several years through the depreciation system; however, inflation erodes the value of future depreciation deductions.

The U.S. Chamber supports the full expensing of business equipment or, at the very least, a permanent increase in the Section 179 equipment expensing allowance. Such a measure would spur additional investment in business assets and lead to increased productivity and more jobs.

While the U.S. Chamber supports initiatives to make permanent the increased amount eligible for immediate Section 179 expensing, it will continue to support efforts to provide full expensing of business equipment.

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The Social Security system is under considerable strain from shifting demographic patterns in the United States. Intermediate estimates by the trustees of the Social Security Trust Fund predict that Social Security payroll tax revenues will fall below outlays sometime around 2018, and the trust funds, which are generating a surplus now, will be exhausted by 2042. At that point, there will be a huge gap between outlays and revenues because of a booming retirement population and an employee base that is growing much more slowly. To contend with these demographics, benefit levels must be cut, payroll taxes raised, or additional funds transferred from general Treasury receipts. To avoid these draconian stopgap measures, the system should be substantially revamped. The earlier these challenges are faced, the less drastic and divisive the solutions will be.

The U.S. Chamber is committed to making sure that Congress and the administration take steps to avert this fiscal crisis and to maintain the viability of our Social Security system. The Chamber believes that Social Security reform should avoid unnecessary tax increases or benefit cuts and should include a private savings account option for individual private market investments.

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Stock options granted as incentive stock options (ISOs) or under employee stock purchase plans (ESPPs) enable corporations to attract and retain employees and encourage employees to take an interest in the welfare of their companies and participate financially in their growth. The flexibility that corporations have traditionally enjoyed in making these options (also known as "statutory" or "qualified" stock options) available came under assault during the 107th and 108th Congresses, both legislatively and by proposed regulation.

During the 107th Congress, the Levin-McCain Bill (S. 1940) and its companion, the Stark Bill (H.R. 4075), both entitled Ending the Double Standard for Stock Options Act, proposed modifications in the treatment of stock options under the Internal Revenue Code that would force corporations to expense the options when issued—using questionable methodology that would yield speculative valuations—or forgo tax benefits. Similar attacks continued during the 108th Congress and are anticipated in the 109th Congress as well.

Meanwhile, the Treasury Department leveled a regulatory attack against stock options. It proposed regulations that would impose new Federal Insurance Contributions Act and Federal Unemploy-ment Tax Act (FUTA) payroll taxes on the exercise of ISO and ESPP stock options, breaking with more than 30 years of interpretation that exempted these options from payroll taxes.

The U.S. Chamber fended off efforts to impose mandatory stock option expensing. It was also successful in obtaining an indefinite moratorium on the effective date of proposed regulations that would impose payroll taxes on the exercise of statutory stock options, and later in working to enact legislation—the American Jobs Creation Act of 2004 (Public Law 108-357)—that preempts regulations of this kind.

The Chamber is committed to preventing the mandatory expensing of stock options that would use faulty valuation.

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The Working Families Tax Relief Act of 2004 (Public Law 108-311) extended the work opportunity tax credit and the welfare-to-work tax credit through December 31, 2005. These tax credits encourage employers to hire individuals from several targeted groups. Eligible workers under the work opportunity tax credit include economically disadvantaged youths, Vietnam veterans, and welfare recipients. Eligible workers under the welfare-to-work tax credit include long-term recipients of family assistance. Without these tax credits, employers might have less incentive to hire individuals from the targeted groups.

The U.S. Chamber believes that extension of the credits is a step in the right direction, but that both credits should be extended permanently. They provide employers with an added incentive to hire disadvantaged individuals, which in turn benefits the local and national economies. Permanent extensions would provide continuity and certainty to the income tax system and maximize the beneficial aspects of the credits. The Chamber will continue to support efforts to permanently extend both credits.

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The IRS reclassification of workers from independent contractors to employees can be devastating to small-business owners. Such reclassification often subjects a business to back federal and state taxes, penalties, and interest, as well as administrative penalties. To satisfy their assessments, business owners must dip into their cash reserves, lay off workers, sell assets, or even liquidate or declare bankruptcy. Businesses that choose to dispute IRS reclassification may have to deplete their resources to defend their positions.

Existing worker classification rules are complicated, confusing, and subjective. Clearer classification guidelines—either statutory or regulatory—should include improved resolution of classification disputes and better training for IRS examiners. In recent Congresses, objective criteria were developed to determine who is not an employee. These criteria are significantly clearer and easier to apply than the existing subjective 20-factor test and Section 530 safe harbor rules.

While supporting the promulgation of clear and simple classification criteria, the U.S. Chamber will continue to oppose any poorly conceived efforts that may harm the thousands of businesses and workers around the country that have operated under the current law for more than two decades.

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EXHIBIT 19

NATIONAL BUSINESS AGENDA

Addressing Policy Priorities of American Business

U.S. Chamber of Commerce

2007–2008

110th Congress

The 2007–2008 National Business Agenda

Publication #0502

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Chamber of Commerce, P.O. Box 1200, Washington, DC 20013.
For telephone orders, call 1-800-638-6582.

Credits:
Jack Clark, editor
Justin Lumadue, associate editor
Mary Xu, graphic designer
Brian G. Miller, production artist
EEI Communications, layout and production support

U.S. Chamber of Commerce
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The 2007–2008 National Business Agenda

U.S. Chamber of Commerce
110th Congress

Addressing Policy Priorities of American Business

LETTER FROM THE PRESIDENT

I am pleased to present the 2007–2008 National Business Agenda outlining the major legislative and regulatory priorities of the U.S. Chamber of Commerce, the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region.

Every two years, the U.S. Chamber surveys its members to determine their top priorities for the new Congress. We compile the results of this survey to create the National Business Agenda. The size and diversity of the survey pool make the National Business Agenda a credible and valuable resource for members of Congress, the administration, and our business activists across the country.

Though businesses have identified dozens of specific public policy priorities for 2007–2008, the sum of their responses conveys a core philosophy of fewer regulations and frivolous lawsuits, lower taxes, and less government interference in the marketplace. If policy makers deliver on these issues, then business will be better positioned to create more jobs, invent new products, open new markets, and increase productivity.

The Chamber's talented team of lobbyists, policy experts, communication specialists, and grassroots coordinators will aggressively pursue the National Business Agenda before Congress, the administration, the regulatory agencies, the courts, and the vital court of public opinion.

With a new Congress come new opportunities to address the business community's greatest concerns and challenges. We ask for your support in making the 2007–2008 National Business Agenda a reality.

Sincerely,

Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce

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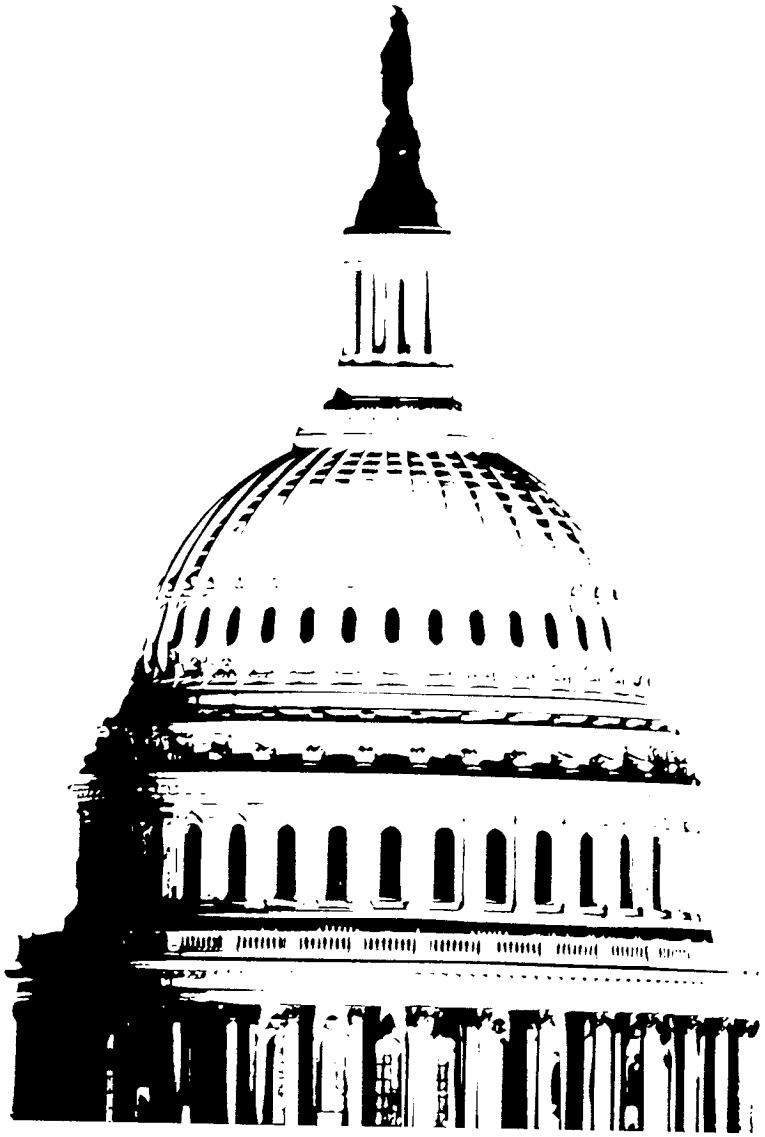

ENVIRONMENT, ENERGY, AND REGULATORY REFORM

USCC 55641

AIR QUALITY STANDARDS

The U.S. Chamber's objective is to ensure that air quality standards are based on the best publicly available scientific and risk-assessment information. To protect the health and well-being of Americans and to accurately assess the impact of the standards on affected communities and businesses, air quality standards must be based on the best publicly available scientific information. The U.S. Environmental Protection Agency (EPA) and state and local governments share the responsibility for regulating air quality under a complex statutory scheme in the Clean Air Act (CAA). The CAA imposes emissions limitations using National Ambient Air Quality Standards (NAAQS). Under the CAA, EPA has developed NAAQS for six criteria pollutants: sulfur dioxide, carbon monoxide, lead, particulate matter, ozone, and nitrogen dioxide. State and local government officials apply the NAAQS to individual facilities using state implementation plans (SIPs).

As part of its overall strategy for meeting the NAAQS, each SIP takes into account unique local conditions, including current and projected economic and population growth, traffic patterns, types of local industries, and the effect of transported pollutants. Accordingly, implementation of NAAQS has a profound impact on the economies of localities across the nation. Failure to attain NAAQS results in severe penalties for states and communities, including the loss of federal highway funding, restrictions on new industrial permits, and other limits on economic growth.

Owing to the significant impacts that can result from NAAQS implementation, the U.S. Chamber believes that revisions to NAAQS should be based upon the best scientific and risk-

assessment information available, and should consider human health, economic impacts, and the future effects of air quality initiatives currently in place. If NAAQS are revised, their implementation should be timed to cause minimal economic harm and to take full advantage of all current efforts to improve air quality. Finally, the Chamber believes that market-based models are the most useful regulatory schemes to reduce large percentages of pollutants significantly and cost-effectively.

The U.S. Chamber will do the following:

- Support a thorough scientific evaluation of proposals to revise NAAQS.
- Challenge use of poor-quality data and models, including models whose validity has not been established.
- Support an evaluation of the impact of proposed NAAQS revisions on the economy and human health.
- Support and advocate market-based pollution control and abatement programs.

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CLIMATE CHANGE

The U.S. Chamber's climate change objectives promote long-term financing, development, and deployment of cost-effective, innovative energy technologies that can be utilized to address energy, security, and climate change challenges as well as long-range sustainability objectives, while ensuring that what is done is not economically disruptive. Greenhouse gas (GHG) emissions are increasing and will inexorably continue to increase even if the Kyoto Protocol is fully implemented. No matter what higher emissions mean in terms of climate change, no nation will willingly destroy its economy to stem the rise of emissions. Measured against the full dimensions of the climate change challenge—such as the proposed goal of stabilizing global atmospheric levels of carbon dioxide at no more than double what they were in pre-industrial times—it is clear that existing technological options will be insufficient.

Over the long term, it will be necessary to invest vast resources to develop and globally deploy as yet unavailable clean and innovative energy technologies. Long-term progress on this front will ensure access to diversified energy resources, support energy and national security needs, and promote sustainable prosperity. This investment will create new intellectual property such as patents, licenses, and royalties, as well as millions of new jobs, and will place the U.S. business community on a solid footing to compete effectively in the global marketplace.

The Energy Policy Act of 2005 includes a title devoted to climate change policy. It fosters the development and deployment of technologies to reduce the intensity of GHGs. Provisions throughout the act direct public resources and spur investment of private sector resources toward developing

and deploying new technologies capable of producing clean, affordable energy necessary for ensuring robust domestic and global economic growth.

The U.S. Chamber will do the following:

- Defeat proposed measures that are economically disruptive of business and industry activities.
- Resist ill-conceived legislation that creates regulatory and legislative obstacles to development and deployment of affordable, innovative energy technologies.
- Encourage measures that foster long-term technological innovation aimed at addressing energy, security, and climate change challenges as well as long-range sustainability objectives.
- Resist ill-conceived climate change policies and measures that could severely damage the security and economy of the United States.

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COMPREHENSIVE ENERGY POLICY

The U.S. Chamber's objective is to implement the Energy Policy Act of 2005 and advocate for additional actions to ensure the development and deployment of affordable, reliable energy supplies that promote energy, economic, and national security. Energy is the lifeblood of the economy; U.S. economic prosperity is closely tied to the availability of reliable and affordable supplies of energy. However, since 1973, U.S. energy production has grown only 13%, while U.S. energy consumption has increased 30%. Even when increases in efficiency are taken into account, significant increases in demand are projected.

After attempts in the previous two sessions of Congress, the 109th Congress passed the Energy Policy Act of 2005 on July 29, 2005, and President Bush signed the act into law on August 8, 2005.

As a co-founder of the Alliance for Energy and Economic Growth, the U.S. Chamber has long been recognized as a leader in advocating a comprehensive national energy policy. The Energy Policy Act of 2005 incorporates all of the U.S. Chamber- and Alliance-identified components of a comprehensive energy policy:

- Increases energy efficiency and conservation.
- Ensures adequate energy supplies and generation.
- Renews and expands the energy infrastructure.
- Encourages investment in new energy technologies.

- Provides energy assistance to low-income households.
- Ensures appropriate consideration of the effects of regulatory policies on energy supplies.

While the Energy Policy Act of 2005 is a critical first step, much work remains to be done. For example, the act does not contain short-term provisions necessary to reduce oil and natural gas prices. Such provisions would include streamlined permitting requirements for refinery expansion and construction, enforceable measures to reduce the proliferation of boutique fuels, and provisions allowing for increased production of oil within the United States in areas such as the Outer Continental Shelf and the Arctic National Wildlife Refuge.

The U.S. Chamber will do the following:

- Ensure that the act's agency directives are implemented promptly and include stakeholder participation at the earliest possible opportunities.
- Educate businesses about the innovative energy technology development and deployment opportunities contained in the act.

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COST-BENEFIT ANALYSES AND REGULATORY ACCOUNTING

The U.S. Chamber's objective is to ensure that federal agencies conduct reliable cost-benefit analyses of all proposed regulations and that the federal government provides a detailed annual accounting of the costs and benefits of all regulations.

Each year, federal agencies issue approximately 4,000 new regulations. Federal regulations cost an estimated $1.1 trillion annually. The U.S. Chamber supports the use of cost-benefit analyses by federal agencies so the public can assess the likely impact of regulatory proposals, establish priorities, consider alternatives, and target resources to those activities that will use public resources most effectively to protect human health and the environment. Executive Order 12866 requires federal agencies to prepare cost-benefit analyses for all significant regulatory actions.

The U.S. Office of Management and Budget (OMB) has issued cost-benefit guidelines that instruct agencies on how to prepare these analyses. While the guidelines are detailed and comprehensive, agency compliance has been sporadic and mixed to date. In addition, further improvements in agency analyses and consistency across agencies will be needed before these documents can be truly valuable to the public.

The U.S. Chamber also supports the development of a detailed annual accounting of the costs and benefits of all regulations. OMB has attempted to develop such an accounting for the past several years under the Regulatory Right-to-Know Act. While OMB's efforts are commendable, its annual report is deficient in several key areas. First, OMB merely reports an aggregate of costs and benefits as provided by the agencies,

rather than conducting its own independent analysis. Second, OMB bases its figures on projected costs and benefits that are never validated once regulations are actually implemented. Finally, although substantial research has been done in this area in recent years, there is no adequate economic model for conducting a truly dynamic analysis of total regulatory costs and benefits.

In 2005, OMB requested comments on the possible use of post validation studies by OMB to assess the actual impact of regulations on businesses. The Chamber submitted comments voicing strong support for post validation studies because they will provide a more accurate accounting of the true cost of regulations.

The U.S. Chamber will do the following:

- Ensure that federal agencies conduct reliable cost-benefit analyses of all proposed regulations, to include consideration of less costly alternatives.
- Encourage OMB to promote cross-agency consistency in the preparation of cost-benefit analyses and to reject any analyses that fail to comply with OMB guidelines.
- Persuade OMB to require agencies to validate projected cost-benefit analyses once regulations are actually implemented.
- Support legislation that would pilot test dynamic economic models to assess the total annual costs and benefits of regulations.

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DATA QUALITY

The U.S. Chamber's objective is to ensure that all information disseminated or used by federal agencies in the rule-making process is based on sound science and rigorous technical analysis. Federal regulations cost an estimated $1.1 trillion annually. These costs are passed along in the form of higher prices for goods and services, higher taxes, reduced wages, lower employment, stunted economic growth, and slower technological innovation. The U.S. Chamber has long advocated for changes to the federal regulatory process that will help ensure that rulemakings and other federal agency activities are based upon sound science and the best available data.

The Data Quality Act (DQA) requires the U.S. Office of Management and Budget (OMB) to issue governmentwide guidelines that "ensure and maximize the quality, objectivity, utility, and integrity of information" disseminated by federal agencies, including information used to support new federal regulations. The DQA further requires agencies to establish administrative mechanisms that allow affected parties to petition for the correction of information that does not comply with the new OMB guidelines.

OMB has issued its final DQA guidelines, requiring each federal agency to issue its own implementing guidelines. Among the most important elements in the guidelines are requirements that influential scientific and statistical information be sufficiently transparent and reproducible, that agencies ensure the quality of data provided by third parties, and that agencies establish an administrative appeal process for correction requests that are denied. As a result, the U.S. Chamber believes the DQA may be one of the most significant develop-

ments in the federal rulemaking system since passage of the Administrative Procedure Act more than fifty years ago.

The U.S. Chamber has provided frequent testimony before Congress on the importance of the DQA and what it means for businesses. Moreover, the Chamber was a party to a lawsuit before the 4th Circuit Court of Appeals that—although dismissed on procedural grounds—attempted to establish the judicial reviewability of the DQA, the first such case to do so. The Chamber has also used the DQA to challenge the accuracy of several databases disseminated by the U.S. Environmental Protection Agency, which are used by the regulated community for making risk assessments and estimating remedial costs for environmental cleanups. The Chamber will continue to actively support the DQA to ensure accountability in federal agency decision making.

The U.S. Chamber will do the following:

- Work with federal agencies to ensure that all data disseminated or used by the agencies comply with OMB and agency data quality guidelines.
- Conduct scientific, economic, and other research, where appropriate, to test the quality of data used by federal agencies in support of regulations or other policies.
- Use the DQA petition process to attempt to correct erroneous or poor-quality data that adversely affect the business community.
- Incorporate violations of the DQA into legal challenges against federal agencies.

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E-GOVERNMENT

The U.S. Chamber's objective is to ensure that the federal government uses advanced technologies and the Internet to deliver better government services to the public at lower costs, and to ensure that government works in collaboration with the private sector to develop and deploy essential electronic technologies.

According to the U.S. Office of Management and Budget (OMB), the federal government is the world's largest consumer of information technology (IT). However, while use of IT has contributed 40% of private sector productivity growth in recent years, the public sector has failed to realize similar gains. In fact, even though the federal government now spends nearly $60 billion annually on IT, most federal agencies have not used these new technologies to rethink governmental processes or create new and dynamic models of government. The E-Government Initiative seeks to change that.

The E-Government Initiative attempts to create citizen-focused services that improve the value of government to the public. An interagency E-Government Task Force is currently working to identify systematic barriers to e-government deployment, initially in the areas of electronic procurement, grants, regulations, and authentication. Key priorities include the development of enhanced computer security and confidentiality protections, Internet-based IT systems to improve public access to information and services, fully interactive regulatory dockets, and reduced paperwork and reporting requirements. Improved access to information, including electronic regulatory dockets, should greatly enhance the quality and transparency of regulations.

While the promise of e-government is massive, there are critical technological barriers. For example, the rapid advance and obsolescence of technologies means that government must develop the ability to archive and retrieve vast amounts of electronic information across generations of technologies. Private sector interests are enormous as well. Private companies need to retain and access electronic records (e.g., plans, specifications, and designs) for a variety of legal and regulatory purposes. Some of these records encompass millions of pages and can only be stored electronically. People may have to refer to them for decades into the future. Thus, the legal and regulatory implications of e-government are only now becoming clear.

The U.S. Chamber will do the following:

- Work with Congress and the executive branch to ensure that the federal government uses advanced technologies and the Internet to deliver better government services at lower costs.

- Promote government collaboration with the private sector to develop and deploy essential electronic technologies.

- Support research and development efforts to create electronic records archiving capabilities for federal agencies and the private sector. Ensure that federal agencies conduct reliable cost-benefit analyses of all proposed regulations, to include consideration of less costly alternatives.

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E-WASTE

The U.S. Chamber's objective is to develop an industry consensus on the development of a uniform national approach to the management of disposed e-waste.

E-waste refers to the refuse created by discarded electronic devices and components, as well as substances involved in their manufacture or use. The National Safety Council estimates that almost 100 million computers and monitors become obsolete annually. The Gartner Group estimates that in 2006, 153.9 million personal computers will be replaced. Cell phones have a life cycle of less than two years in industrialized countries, and an estimated 130 million mobile phones were disposed of worldwide in 2005, according to the United Nations Environment Programme.

Many electronic devices contain valuable elements such as gold, silver, and platinum. E-waste can also contain potentially harmful substances such as cadmium, lead, and mercury. For example, traditional cathode-ray tube computer monitors contain about 20% lead by weight. The U.S. Environmental Protection Agency (EPA) estimates that only about 10% of all obsolete consumer electronics are recycled. The rest are stored, passed on to second users, or simply tossed in the trash. The EPA's most recent estimate is that more than 2 million tons of e-waste end up in U.S. landfills each year.

The European Union (EU) has taken steps to regulate e-waste. For example, on July 1, 2006, the EU directive on Waste from Electrical and Electronic Equipment went into effect for most EU countries. The directive seeks to increase the reuse, recycling, and recovery of electronic devices.

The U.S. Congress and the EPA are studying the issue. Meanwhile, California, Maine, Maryland, and Washington have passed e-waste laws, and several other states are debating the topic. The electronics industry is concerned that without a uniform national approach to e-waste, manufacturers and retailers will be forced to comply with 50 different state e-waste programs. Many companies now agree that these goods should be recycled, but the industry has not yet formulated a unified policy position. The main disagreement centers on how recycling efforts should be funded.

The U.S. Chamber will do the following:

- Create a working group to develop an industry consensus and Chamber policy on e-waste.
- Draft legislative and regulatory language that creates a uniform national approach to the management of disposed e-waste and urge adoption of that language by Congress and the EPA.

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EMERGING TECHNOLOGIES

The U.S. Chamber's objective with regard to emerging technologies is to advocate for federal policies that encourage the development and deployment of emerging technologies to domestic and foreign markets. Emerging technologies in this context include those in the fields of energy and the environment, including clean coal, biofuels, fuel cells, renewable energy sources, and energy efficiency, as well as biotechnology and nanotechnology. Chamber activities are designed to create a positive environment for new and emerging technologies within the energy and environment arena and help American businesses remain competitive in the global marketplace. Through interactions with Congress, the executive branch, and regulatory agencies, the Chamber advocates for federal policies that support technological innovation and deployment. Within the Chamber, the Emerging Technologies Committee coordinates efforts among the regulatory committees to ensure a positive regulatory environment for emerging technologies.

The U.S. Chamber will do the following:

- Through its Emerging Technologies Committee, host conferences, seminars, and other events to support emerging technologies in the fields of energy and the environment, including clean coal, biofuels, fuel cells, renewable energy sources, and energy efficiency, as well as biotechnology and nanotechnology.

- Identify opportunities for Chamber members to interact with federal policymakers and other parties on establishing beneficial initiatives and partnerships for developing and deploying emerging technologies.

- Provide comments, testimony, and policy recommendations on relevant legislation and regulations.

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ENDANGERED SPECIES ACT

Three decades after implementation, the Endangered Species Act (ESA) has failed to achieve its purpose, yet has stifled economic development and burdened landowners. Its legacy has been tremendous conflict with landowners and local communities that results, in many instances, in threatened species being subjected to more harm than help.

The ESA, which is jointly enforced by the U.S. Fish & Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), makes it illegal to "take" any threatened or endangered species without a permit. The FWS and NMFS use a broad definition of "take" to prohibit direct harm to any listed species and to prohibit the degradation of a species' significant habitat. This definition has enabled large areas of land and water to be designated as critical habitats for listed species and has resulted in significant disruption to commercial and agricultural development. Private property owners who seek to comply with ESA regulations have difficulty because FWS regulations do not include adequate scientific criteria to determine whether a species is truly endangered. Furthermore, despite a requirement by the ESA, the FWS has not developed reasonable habitat conservation and recovery plans to revive threatened species.

As a result, the ESA has failed to protect species. Of the 1,274 species listed, only 40 have been removed from the list; 21 were deemed to have been erroneously listed, 9 are extinct, and only 10 have recovered, though the recovery of at least 8 of these species was due to factors other than the ESA.

The U.S. Chamber will do the following:

- Seek the adoption of clear and objective standards for evaluating species listings and critical habitat designations under the ESA, including clear standards for using sound science, best available peer-reviewed studies, and detailed cost-benefit considerations for the affected communities.
- Seek legislation to protect the rights of property owners affected by ESA listings and critical habitat designations.
- Advocate for legislation and regulations to require that economic analyses be completed before a species is listed as threatened or endangered, as required by the ESA.

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FEDERAL LAND MANAGEMENT

The U.S. Chamber's objective is to ensure multiple uses of federal lands, from environmentally compatible economic activities to recreation and conservation. Federal natural resource policies that guide the management of public lands have substantial impacts on local and regional economies, particularly in the western United States. Efforts to limit uses of federal lands and forests have restricted the effective maintenance and use of public lands and the economies of communities in these areas.

These policies have distressed communities in areas with large tracts of public lands. For example, since the early 1900s, receipts from timber harvested on federal lands have funded school districts in forested communities. Consequently, efforts to restrict timber activities have greatly reduced education funding for many rural schools.

Moreover, at a time when the nation needs to increase domestic energy production, vast stretches of public lands and offshore holdings with important energy, mineral, and timber resources remain unavailable. As part of a strong national energy policy, all opportunities to harness the energy potential of the Outer Continental Shelf should be explored, and energy resources on public lands should be developed to reduce U.S. reliance on foreign sources of petroleum and natural gas.

The Chamber strongly advocates for multiple uses of federal lands, from environmentally compatible economic activities to recreation and conservation. The Chamber encourages strategies to achieve appropriate long-term forest and public land management policies. The Chamber supports the full implementation of current forest plans and efforts to continue the

timber sales program of the U.S. Department of Agriculture's Forest Service, and opposes efforts to eliminate road construction in sections of national forests and restrict cattle grazing on public lands.

The U.S. Chamber will do the following:

- Ensure that public lands are managed for multiple uses, including recreation and extraction of mineral resources, to achieve the maximum public benefit.
- Advocate that, as part of a strong national energy policy, energy resources on both public lands and in offshore holdings be developed to reduce the United States' reliance on foreign sources of oil and natural gas.

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FOOD SAFETY AND WARNING LABEL REQUIREMENTS

The U.S. Chamber's objective is to advocate for the application of sound science and regulatory clarity to food safety and warning label requirements. Currently, a "patchwork quilt" of state and local regulations govern food safety and warning label requirements, setting the stage for consumer confusion and heavy regulatory burdens on businesses.

The Chamber supports national uniformity of food safety and warning label requirements to reduce the regulatory burden on businesses and ensure that consumers receive consistent, science-based information about their food. A single national system for food safety and warning label requirements gives consumers and businesses the clarity they need to determine what is safe, what is permissible, and what needs to be labeled. With the increase in new food sources from overseas and thousands of new products introduced each year by domestic manufacturers, the need for a national food safety system is greater today than it was even ten years ago. Such a system, developed with input from state policymakers, would be consistent with most other regulatory programs for food, including meat and poultry regulations, nutritional labeling, and pesticide tolerance standards. The Chamber believes that the same regulatory structure used in the vast majority of federal food regulations should also be applied to food safety and warning label requirements.

The Chamber is a member of the National Uniformity for Food coalition, an industry coalition whose mission is to secure for consumers a single set of food safety standards developed in

cooperation with state policymakers and based on a consensus interpretation of the entire body of scientific evidence.

The U.S. Chamber will do the following:

- Support legislation that achieves national uniformity for food safety and warning label requirements while striking the appropriate balance between national and state interests.

- Work with coalition partners on initiatives to educate policymakers, businesses, and consumers on the importance of implementing uniform food safety and warning label standards.

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NANOTECHNOLOGY

The U.S. Chamber's objective is to ensure that nanotechnology is not subject to excessive government regulation, that the economic benefits of nanotechnology are maximized, and that the business community has a collective and uniform voice in the development of any regulatory structure.

Nanotechnology is the creation of materials, devices, and systems through the manipulation of individual atoms and molecules. It is a term used to define the application of materials whose size is measured in billionths of a meter. A human hair, for instance, is 100,000 nanometers in diameter. At the nanoscale, materials exhibit unique properties, allowing for new manufacturing possibilities and applications in a variety of fields. These unique properties present new challenges in both the regulatory and legal arenas.

Despite these challenges, the United States must maintain its lead in nanotechnology development—not just in the scientific arena, but in the commercial one as well. By 2014, approximately $2.6 trillion in global manufactured goods, or about 15% of total output, will incorporate nanotechnology. Global spending on nanotechnology research and development has increased every year, with industry spending $4.5 billion in 2005 and governments spending another $4.6 billion. Moreover, venture capitalists invested approximately $500 million last year in nanotechnology ventures.

Some urge the United States to proceed under the precautionary principle, advocating inaction until any possible risks associated with nanotechnology have been identified and quantified. Such a course would not only be unwise, but would almost certainly cost the United States the opportunity to

define the regulatory landscape in this field. Instead, as a nation, we should continue to develop commercial applications for nanotechnology while simultaneously pursuing efforts to standardize risk assessment protocols.

The U.S. Chamber will do the following:

- Ensure that the business community has a role in any regulatory framework developed.
- Work with federal agencies to ensure that commercial applications of nanotechnology continue to flow to the marketplace.
- Lobby Congress, as needed, on issues important to our members.
- Form a working group among Chamber members to prepare agency comments, draft white papers, develop uniform talking points, and coordinate a communication strategy to address risks, real and perceived, regarding nanotechnology.

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NEW SOURCE REVIEW

The U.S. Chamber's objective is to advocate for revision of the New Source Review (NSR) program to achieve improved environmental protection and increased energy production. The NSR program, under the Clean Air Act, establishes emissions standards for new and modified stationary sources of air pollutants. In the past, the U.S. Environmental Protection Agency (EPA) has resisted treating routine maintenance and repairs as major modifications requiring new permits and more stringent controls. In 1998, EPA significantly narrowed the exemption for routine maintenance to cover only frequent, traditional, and comparatively inexpensive repairs made to maintain existing equipment. EPA began a series of enforcement efforts based on this new interpretation of the exclusion. Beginning in 2002, EPA reviewed the NSR rules and made numerous recommendations to streamline them and provide certainty for the regulated community. These recommendation culminated in EPA promulgating new provisions in August 2003 concerning routine equipment replacement rules. The equipment replacement rules clarify the regulatory process and allow facilities to replace process unit parts without fear that the improvements will put the facility in violation of the NSR program.

The Chamber will continue to advocate for rules that clarify the effects of routine maintenance and repair. EPA has considered a number of other revisions to the NSR rules. For example, Plantwide Applicability Limits would allow a facility to avoid the NSR permitting process when making alterations if actual emissions remain below a plantwide cap. EPA has also reviewed provisions that would allow a facility to make changes to a designated unit without triggering further review if the

changes do not alter permitted emissions limits, work practice requirements, or any physical or operational characteristics of the facility. Finally, EPA is contemplating recognition that installation of environmentally beneficial technologies should not trigger NSR review. EPA is also considering changing the methodology for calculating emissions with a new procedure for determining actual baseline emissions.

As part of its advocacy efforts, the Chamber, through its National Chamber Litigation Center (NCLC), filed an amicus brief in Environmental Defense, et al. v. Duke Energy Corp., et al. In its brief, NCLC argues that Duke Energy's plan to modernize its electric utility plants does not need to be submitted to the government pursuant to the Clean Air Act's NSR process because no major modification of Duke Energy's permitted operations occurred. At issue is whether hourly or annual emissions represent the baseline for determining whether NSR governs a particular plant modernization. The U.S. Supreme Court is expected to make a decision in this matter in 2007.

The U.S. Chamber will do the following:

- Oppose legislative attempts to block NSR reform efforts.
- Continue to advocate for NSR reforms that streamline the permitting process, provide flexibility, and ensure regulatory certainty for facility owners and operators.
- Advocate for alignment between EPA regulatory and enforcement policies.

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NUCLEAR WASTE MANAGEMENT

The U.S. Chamber's objective is to support the final permitting, construction, and operation of a permanent repository for spent nuclear fuel at Yucca Mountain, Nevada. The Nuclear Waste Policy Act of 1982 (NWPA) obligates the U.S. Department of Energy (DOE) to manage the disposal of spent nuclear fuel and high-level radioactive waste from commercial power reactors and defense programs. In 2002, Congress overturned the objections of Nevada Governor Kenny Guinn and approved Yucca Mountain as the site for a national repository.

Yucca Mountain has become the most studied piece of real estate in the world. Hundreds of scientific studies have shown Yucca Mountain to be a safe and suitable location for a repository. According to DOE reports, the Yucca Mountain repository is unlikely to release radiation into the outside world for at least 10,000 years. Its remote location, dry climate, and extremely deep water table greatly reduce the possibility of waste seepage. Although Yucca Mountain has long been considered the main site for permanent storage of the nation's growing nuclear waste material, for two decades it has faced substantial political debate impeding its final approval. Currently, 131 temporary facilities in 39 states store spent nuclear fuel. This waste should be consolidated in a federal repository designed for long-term storage.

Under NWPA, the federal government has received commitments of more than $17 billion from utilities around the country to fund DOE construction of such a repository. DOE has thus far failed to begin construction but continues to

collect $600 million annually from electricity consumers for this purpose.

With the final legislative hurdle cleared, DOE is now authorized to apply to the U.S. Nuclear Regulatory Commission (NRC) for a license to operate the Yucca Mountain repository. The Chamber believes the NRC should grant DOE a license to operate the Yucca Mountain repository.

The U.S. Chamber will do the following:

- Continue to inform the news media and the public about the safety record of nuclear waste transportation.
- Support complete funding of the Yucca Mountain budget and oppose efforts to undercut the repository licensing process.
- Urge the adoption of any additional legislation needed to complete the licensing process or construct the repository.

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PRIVATE PROPERTY RIGHTS

The U.S. Chamber's objective is to ensure that federal statutes, regulations, and policies do not unnecessarily restrict private property rights, and that private property owners are justly compensated for reductions in the value of their property caused by government actions that restrict property use.

Private property rights are one of the most valued provisions o the U.S. Constitution. Yet more and more often, property owners are subjected to regulatory "takings" that drastically restrict the use of their land and, consequently, diminish its overall value.

Although such regulatory takings give rise to a federal constitutional claim under the Fifth Amendment, property owners are barred from seeking redress in federal courts as the unfortunate result of two irreconcilable U.S. Supreme Court opinions. In *Williamson County Planning Commission v. Hamilton Bank* (1985), the Court decided that property owners must litigate all Fifth Amendment takings claims in state court before they can file in federal court. But in *San Remo Hotel v. City and County of San Francisco, California* (2005), the Court held that property owners who had adjudicated their Fifth Amendment takings claims in state court were precluded from seeking federal court review. Together, these two cases bar property owners from ever having their constitutional claims heard on the merits in federal court.

To correct this profound inequity, the Chamber helped to pass The Private Property Rights Implementation Act of 2006 (H. R. 4772), which would allow property owners access to federal court for their Fifth Amendment takings claims. The Senate received the bill on September 30, 2006, and the

Chamber will work to ensure that it is taken up by the 110th Congress.

The U.S. Chamber will do the following:

- Continue to monitor and, when necessary, oppose federal legislation and regulations that further restrict private property rights.
- Support federal legislation that clearly defines the meaning of the term "takings" to include not only physical occupation, but regulated uses and diminished value as well.
- Support litigation involving property takings issues and other private property rights.
- Monitor legislation and litigation as they relate to the impacts of environmental laws (e.g., the Endangered Species Act), which are often viewed as having the most adverse impact on property rights.

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TELECOMMUNICATIONS REFORM

The U.S. Chamber's objective is to advocate for updated telecommunications laws that better reflect the competitive nature of the industry, spur economic development, and encourage the deployment of new technologies and services.

Only with competitive technologies can the United States participate fully in the global economy. Without them, U.S. companies may be forced to move jobs overseas. Unfortunately, the nation's telecommunications laws have failed to keep pace with advances in technology, stifled new investment, and hindered the deployment of new technologies. In rankings of global broadband deployment, the United States has fallen to sixteenth place, down from thirteenth in 2004 and fifth in 2000. Therefore, the Chamber has formed the TeleCONSENSUS coalition to educate Congress, the business community, and the public about the need for updated federal telecommunications laws.

TeleCONSENSUS efforts will be guided by the following six principles:

1. Federal telecommunications laws must be updated to foster innovation, expand consumer choice, spur investment, create jobs, enhance efficiency, and increase productivity.

2. Telecommunications markets should be driven by consumer demand, advances in technology, and competition between telecommunications companies, while encouraging public safety, consumer protection, access for people with disabilities, and other public interest goals.

3. Universal service, ensuring affordable basic telephone service for all Americans and Internet access in the nation's schools and libraries, is an important national commitment and must be preserved.

4. Government should not burden consumers with discriminatory or excessive telecommunications taxes, nor should obsolete regulations limit Americans' access to innovative services and choices.

5. Consumer choice and private sector investment should drive the deployment of high-speed Internet access into U.S. communities.

6. Additional spectrum should be allocated for innovative wireless services.

The U.S. Chamber will do the following:

- Host forums on the importance of telecommunications and broadband to the U.S. economy.

- Recruit new trade associations, chambers of commerce, telecommunications providers, equipment manufacturers, businesses, and consumers for TeleCONSENSUS.

- Lobby Congress and the administration to pass updated telecommunications laws that embody the above six principles.

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WATER QUALITY

The U.S. Chamber's objective is to promote the sensible regulation of water quality based on technically sound, practical, and economically achievable methods. Industry has made significant contributions to America's continuously improving water quality. Since Congress passed the Clean Water Act (CWA) in 1972, U.S. businesses have spent more than $50 billion annually to monitor and control water pollution. The result is that America's water resources are the healthiest in generations.

Several initiatives with significant economic impacts have been proposed to attempt further improvements in water quality. For example, the Total Maximum Daily Load (TMDL) program would severely restrict local economic growth by limiting the ability of companies to construct new or expand existing facilities in certain locations that have impaired waters. A June 2001 National Academy of Sciences report questioned the design of the TMDL program and called for a more science-based approach.

Enforcement of some CWA programs by the U.S. Environmental Protection Agency (EPA) imposes substantial burdens on businesses without demonstrating a corresponding benefit to the environment. Recently, EPA began an enforcement campaign for its stormwater permitting program. Fines for paperwork violations frequently reach five figures, even where there is no allegation of environmental harm.

The Chamber supports efforts to ensure the maintenance of water quality at levels that protect human health and well-being, as well as physical and biological aquatic environments. Strategies to achieve these water quality levels should be based

on technically sound, practicable, and achievable methods, not on politics. The Chamber will work to ensure that EPA does not issue new water quality rules unless the costs and benefits are clearly identified. Additionally, regulations should be flexible and efficient and should recognize the role of states in addressing their own water quality issues. Finally, EPA enforcement of its regulations should be appropriately tailored to fit the environmental risk, and should be implemented with the goal of achieving compliance, not assessing high fines.

The U.S. Chamber will do the following:

- Work to ensure that any new rules issued by EPA are based on sound science and objective, useful, high-quality data.
- Work to ensure that EPA does not implement new water quality rules until the costs and benefits are clearly identified.
- Work to ensure that any water quality regulations are flexible and efficient and recognize the role of states in addressing their own water quality issues.
- Oppose the use of overzealous enforcement tactics and enforcement programs that do not focus on achieving compliance with EPA's CWA programs.

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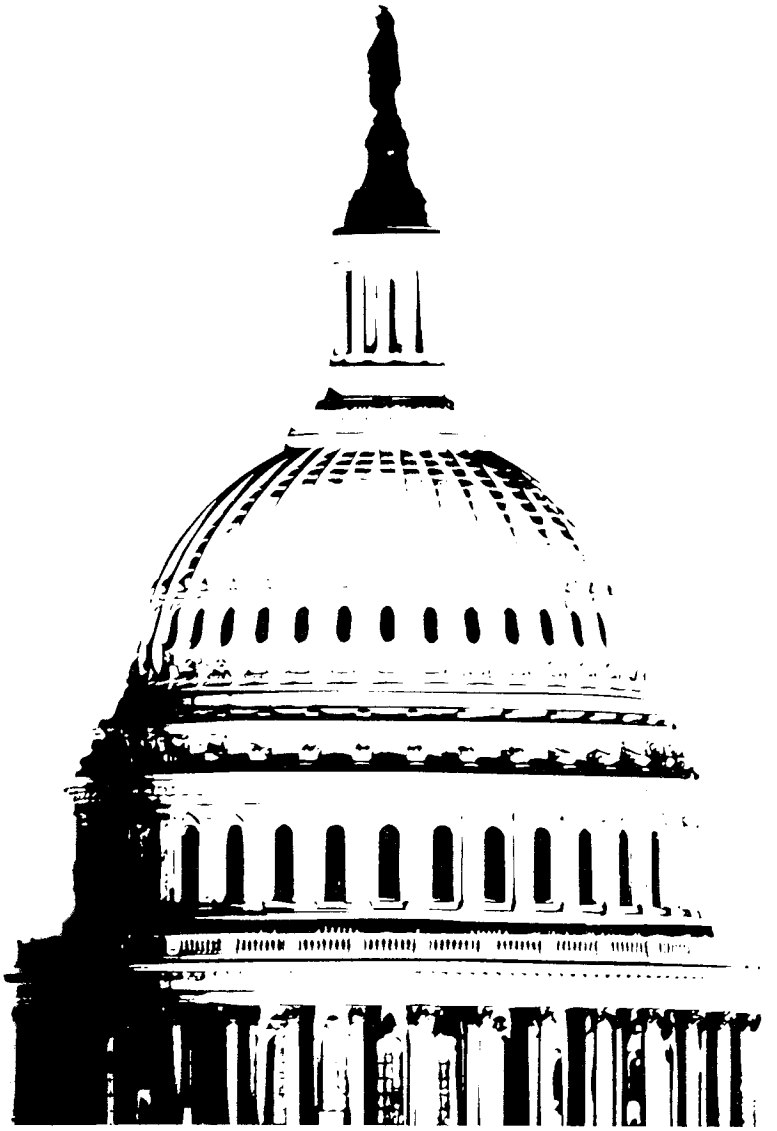


LABOR, HEALTH CARE IMMIGRATION, AND RETIREMENT SECURITY

ACCESS TO SKILLED WORKERS

The U.S. economy continues to need access to skilled workers in many sectors. Access to technology, scientific, education, health, and engineering workers, who the United States is not producing in adequate numbers, continues to be a Chamber priority. In fact, many graduates of U.S. colleges and universities in these fields are foreigners, but U.S. employers have very few avenues to hire them.

In 2003, the increases in the H-1B immigration cap expired, reducing the number of available visas to 65,000. At the end of the 108th Congress, provisions were passed to exempt up to 20,000 H-1B visas from the cap for master's degree and PhD graduates of U.S. colleges and universities, but these numbers are still not enough to prevent the cap from being hit. U.S. Citizenship and Immigration Services allows employers to file early, and for 2007, the cap was actually hit an unprecedented four months before the start of the fiscal year, leaving employers unable to hire any highly skilled foreign workers for sixteen months. The cap has now been hit eight times. The Chamber will continue to urge Congress to allow employers access to highly educated workers from abroad, including ensuring that once an employer sponsors a worker for an employment-based visa (green card), the worker can make it through the process in a timely and efficient way.

The Chamber will also work to ensure that Congress does not make any detrimental changes to the L-1 visa category for international intracompany transfers. Restrictions on the L-1 category—a major conduit for foreign investment in the United States that creates millions of jobs (so-called

insourcing)—could jeopardize this significant part of the U.S. economy.

The U.S. immigration system continues to provide inadequate avenues for employers to access talented workers from around the world. Artificial caps on visas have the effect of driving skilled workers to other countries and to America's competitors, as well as requiring U.S. employers to consider taking projects and work to where the workers are. As the United States continues to fall farther behind in graduating skilled workers in needed disciplines, it faces the danger of losing its competitive edge. The Chamber will continue to play a leadership role in ensuring that employers in the United States can hire the necessary skilled personnel, managers, and executives to expand their businesses and create more jobs and wealth for the U.S. economy.

Sources for additional information: Compete America coalition (www.competeamerica.org); U.S. Chamber materials (www.uschamber.com/issues/immigration/default).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

ATTORNEYS' FEES RECOVERY FOR SMALL BUSINESSES

Too often, the expense and burden of defending against a citation from a regulatory agency are so severe that small businesses are coerced into settling when an agency pursues a minor, or even meritless, action. Current law allows small businesses to recover attorneys' fees if they are successful only after they have proved, in a separate proceeding, that the government's actions were not "substantially justified." This provision has all but eliminated the possibility of small businesses recovering their legal fees.

In the 106th Congress, the Chamber strongly supported the Fair Access to Indemnity and Reimbursement (FAIR) Act (S. 1158, H.R. 1987), a version of which had passed the House in the 105th Congress. The FAIR Act sought to allow small businesses to recoup attorneys' fees when they prevail in administrative or court cases brought by the U.S. Occupational Safety and Health Administration (OSHA) or the National Labor Relations Board.

More recently, in the 108th and 109th Congresses, the Chamber was a leading supporter of bills (H.R. 2731 and H.R. 742, respectively) introduced by Representative Charlie Norwood (R-GA) that passed with bipartisan support but did not move in the Senate. These bills would have repealed the substantial justification obstacle to small businesses recovering their legal fees when they prevail in cases against OSHA. The Chamber remains committed to supporting reform of current law in the area.

Sources for additional information: Fair Access to Indemnity and Reimbursement Act (S. 1158, H.R. 1987—106th Congress); Equal Access to Justice Reform Amendments of 2001 (S. 106); Occupational Safety and Health Small Employer Access to Justice Act of 2004 (H.R. 2731—108th Congress); Occupational Safety and Health Small Employer Access to Justice Act (H.R. 742—109th Congress).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

COMPREHENSIVE IMMIGRATION REFORM

For the past seven years, the Chamber has been a leader, both independently and as a co-chair of the Essential Worker Immigration Coalition (EWIC), in pressing Congress and the administration to address the needs of our economy for a sufficient workforce, particularly in the less skilled essential worker occupations. The aging of the U.S. workforce will likely lead to substantial workforce shortages in the coming years, and recent studies show that immigrant workers greatly contributed to workforce growth in the past decade. The Chamber and EWIC have repeatedly stated that comprehensive immigration reform must include increased border security, a temporary worker program, and an earned legalization component. For passage, it must also have the support of a bipartisan majority.

During the past few years, the Chamber has worked with the administration and congressional leaders on this issue, generating several legislative proposals in Congress and in the president's current immigration initiative. In May 2006, the Senate passed a bipartisan comprehensive reform bill (S. 2611) but was unfortunately unable to reach a compromise with the House. Although not perfect, the Senate bill was a good blueprint that contained the necessary components for comprehensive reform. Immigration issues have risen in importance as part of the national debate over the past two years, with increasing public understanding that our immigration system is broken and needs reform.

Security issues raised by the 9/11 Commission indicate a strong need to get a better hold on our immigration system and to know who is in our country. Immigration legislation will likely be introduced early in the 110th Congress, and

debate on various aspects of immigration reform will likely be a significant part of the agenda for 2007. The Chamber will continue to work with the White House and Congress to achieve passage of comprehensive reform that meets the business community's need for access to essential workers, protects our national security, and recognizes the contribution of immigrants to the United States.

Sources for additional information: Essential Worker Immigration Coalition (www.ewic.org); Chamber Testimony on Essential Workers (www.uschamber.com/Issues/Index/Immigration/default).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522

COMPREHENSIVE PENSION REFORM

After six months of conference negotiations, Congress passed the Pension Protection Act of 2006, and the president signed the bill into law on August 17. The act fundamentally changes the funding rules by eliminating the current funding system and replacing it with new funding targets, a new interest rate assumption based upon a modified yield-curve formula, and a new at-risk liability category. In addition, the act includes various reforms to credit balance rules, disclosure requirements, multiemployer funding, and hybrid plan issues. The act is a significant improvement over the administration's proposal was offered in January 2006, which would have been based on a pure yield-curve formula with a spot interest rate, eliminated credit balances, and required companies below investment grade to make higher contributions.

In addition, the Deficit Reduction Act of 2005 included increases to Pension Benefit Guaranty Corporation premiums. Beginning in 2006, the flat-rate single-employer premiums increase from $19 per participant to $30 per participant and are indexed to wages thereafter. Moreover, companies that reorganize under federal bankruptcy laws must pay a $1,250 per participant termination premium.

Throughout 2005 and 2006, the Chamber worked to educate Congress and the administration on the need for reasonable and rational funding rules that support the defined benefit pension system. In January 2005, the National Chamber Foundation cosponsored a pension reform retreat for Capitol Hill staff. Following the retreat, the Chamber kicked off the formation of a broad business community pension coalition, The Pension Coalition, on February 17, and has been an active

member of the Coalition's Steering Committee. Also, the Chamber jointly testified before several congressional hearings on pension reform legislation. Lynn Franzoi, chair of the Chamber Pension Subcommittee and senior vice president for Fox Entertainment, testified before the House Committee on Education and the Workforce during a hearing regarding the Pension Protection Act of 2005 (H. R. 2830), on June 15, 2005.

In 2007, the Chamber plans to aggressively represent the interests of the business community in pursuing technical corrections and regulatory guidance stemming from this comprehensive pension reform legislation. Such representation includes ensuring that gains made in the comprehensive pension reform legislation are not reduced or eliminated.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522

HEALTH CARE: ACCESS TO AFFORDABLE HEALTH COVERAGE

More than 174 million people in the United States receive employment-based health insurance. In 2005, the number of uninsured Americans increased to 46.6 million, up from 45.9 million in 2004, as health care costs grew and more people found that they could no longer afford their plans or lost access to workplace health plans. Between 2000 and 2005, the percentage of nonelderly Americans with workplace health coverage decreased from 66.8% to 62.0% (see www .ebri.org/pdf/briefspdf/EBRI_IB_10a-20061.pdf).

About 62.3% of uninsured people live in families in which the head of the works full time for the full year but is either not offered health insurance or cannot afford to pay the premiums to participate. Uninsured workers tend to be self-employed or work for smaller businesses: 13.8% of the self-employed are uninsured; 35.3% of workers at businesses with fewer than 10 people are uninsured; 29% of workers at businesses with 10 to 24 workers are uninsured; and 20.9% of workers at businesses with 25 to 100 employees are uninsured. In addition, health care costs continue to grow at a record pace, with costs for large companies increasing by 13.2% in 2003, while small businesses are experiencing annual premium increases of 15.5%.

The U.S. Chamber believes that the problem of access to affordable coverage is our highest health care-related priority and demands swift congressional action. In 2000, the Chamber's board of directors adopted a proposal to expand access to health coverage and make it more affordable while also improving the quality of health health-care services and coverage.

The Chamber supports strengthening and expanding the current employer-based system while developing alternatives for individual health care coverage.

The U.S. Chamber proposes the following:

- Allowing above-the-line deductions for individuals who pay their own health insurance premiums, including premiums for long-term care insurance.
- Creating forward-funded, refundable tax credits for the purchase of private health coverage for low- and moderate-income individuals and families.
- Allowing associations to offer health coverage under the Employee Retirement Income Security Act (ERISA) to small businesses, individuals, and the self-employed.
- Expanding the availability of health savings accounts.
- Reforming the health-care liability system.
- Promoting the value of medical products, biopharmaceuticals, and medical devices.

Sources for additional information: Cover the Uninsured Week (http://coveringtheuninsured.org); Employee Benefits Research Institute (www.ebri.org).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

HEALTH CARE: HEALTH CARE LIABILITY REFORM

An increasing number of excessively litigious states—at least 20 states—are in crises because soaring health care liability costs and an inability to access liability insurance have caused medical providers to move out and have forced hospitals to suspend services. Without access to practicing physicians and high-quality medical facilities, local chambers cannot attract businesses to their areas. Excessive litigation and high medical lawsuit costs have increased employers' health care costs and spurred some providers to "err on the side of caution," leading to increases in health care spending and in the volume of unnecessary services provided.

The U.S. Chamber supports legislation that would do the following:

- Cap noneconomic damages at $250,000.
- Cap punitive damages at the greater of twice economic damages or $250,000.
- Make each party liable solely for its share of damages.
- Allow periodic payments of future damages in excess of $50,000.
- Impose a sliding-scale cap on attorneys' fees.
- Impose a statute of limitations.

While health care groups focused on the medical tort system's impact on the medical profession and those on the front lines

of health care delivery, the Chamber broadened the debate by underscoring the serious long-term impact of the crisis on the economic development of affected communities. The Chamber has mobilized state and local chambers in more than 42 states to support legislation addressing the medical liability crisis, culminating with House passage of the Help Efficient, Accessible, Low-Cost, Timely Health Care (HEALTH) Act of 2005 (H.R. 5). Although the House passed H.R. 5 with bipartisan support, the Senate did not take up companion legislation (S. 354), despite the fact that many states are on the brink of serious physician shortages.

The U.S. Chamber believes it is essential that health care liability reforms apply to the range of health system providers, including health plans and sponsors, to preclude deep-pocket lawsuits. A number of states have enacted laws holding health plans liable for medical judgments, making it imperative that federal tort reform be widely applicable. Federal Employee Retirement Income Security Act (ERISA) preemption laws barring such lawsuits against employers should be maintained. In addition, in cases where damages are awarded to plaintiffs for care that has already been paid by health plans but also ordered compensated in the judgment, the health plan should be able to recover its payments from the provider's liability carrier. Early enactment of the provisions of the HEALTH Act will be a major priority for business in the 110th Congress, and the deepening crisis may help break the logjam of tort reform measures in the Senate.

Sources for additional information: Health Coalition for Liability and Access (www.hcla.org); American Medical Association (www.ama-assn.org).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

HEALTH CARE: SMALL BUSINESS HEALTH PLANS

More than 45 million Americans do not have health insurance, nearly 60% of these people are employed by small businesses. As health care costs continue to rise, fewer employers and working families will be able to afford coverage, and the number of uninsured Americans will inevitably increase.

To make health care more affordable and accessible for small businesses, the U.S. Chamber supports the passage of legislation that would create federally regulated small business health plans (SBHPs). Allowing small businesses to arrange their health benefits through associations will make coverage more affordable by spreading risk among a much larger group, strengthening negotiating power with plans and providers, offering insurance across state lines, and reducing administrative costs. To appeal to their broad membership bases, associations will need to offer comprehensive benefit packages that meet a broad array of health care needs and preferences.

The following safeguards will ensure that these plans protect consumer interests:

- Strict requirements under which only bona fide professional and trade associations, operating for at least three years for purposes other than providing health insurance, may sponsor SBHPs. The U.S. Department of Labor must certify each SBHP.

- Strict solvency standards that go well beyond requirements for employers that self-insure under the Employee Retirement Income Security Act (ERISA).

- Insurance market safeguards that ensure SBHPs result in stable, reliable markets for health insurance. SBHPs are subject to the Health Insurance Portability and Accountability Act (HIPAA), making it illegal for them to deny coverage to any eligible participant based on the health status of an individual employee or employer. It is impossible to "cherry-pick," because high-risk groups or individuals cannot be denied coverage.

- Strong enforcement tools that enable federal and state authorities to protect against health insurance fraud. SBHPs must register with the state where they are based and abide by strict disclosure and reporting procedures; new criminal and civil penalties will combat fraud.

In addition, the legislation gives the Department of Labor (DOL) explicit regulatory authority to ensure that SBHPs are properly administered and implemented. Currently, DOL administers and oversees ERISA protections covering 131 million workers, retirees, and their families. Of these, 67 million Americans are covered by self-insured (corporate) plans and an additional 5 million are covered by Taft-Hartley (union) plans. SBHPs would be subject to the same oversight as these plans. With this experience, DOL is fully equipped to implement and regulate SBHPs when this legislation passes.

Sources for additional information: Coalition web site (www.ahpsnow.com).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

LABOR LAW REFORM

Struggling with a membership that has declined to about 8% of the private sector workforce, labor unions are seeking to amend the National Labor Relations Act to make organizing easier. The central part of organized labor's agenda is the Employee Free Choice Act (H.R. 1696/S. 842, 109th Congress). This perversely named bill would actually give labor unions the right to waive secret-ballot elections in union organizing drives and instead base recognition on a card-check process, in which employees could be forced to choose whether to support a union in the presence of union organizers. In addition, the bill would expand damages for employers' but not unions' violations and would require interest arbitration if a first contract with a union was not reached within 120 days. Government arbitrators would set contract terms.

The U.S. Chamber will aggressively oppose such drastic changes in our nation's labor laws. Organized labor's inability to recruit members is not the result of defects in the law but rather of organized labor's failure to articulate an agenda that is attractive to the majority of American workers. The Chamber believes that an employee's decision on union representation can best be made through a National Labor Relations Board-sanctioned secret-ballot election. To protect this right, the Chamber supports passage of the Secret Ballot Protection Act (H.R. 4343/S. 2637, 108th Congress), which would prohibit an employer from recognizing a union without the support of its employees as evidenced by the results of a secret-ballot election.

Source for additional information: Chamber testimony on the Secret Ballot Protection Act (www.uschamber.com/government/issues/labor/cardcheckscrbal.htm).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

NONQUALIFIED DEFERRED COMPENSATION

On October 11, 2004, Congress passed the American Jobs Creation Act of 2004, which added a new section 409A to the Internal Revenue Code governing the deferral of compensation. This was the first code provision specifically governing nonqualified deferred compensation plans. The business community lobbied aggressively to narrow as many of these provisions as possible and was successful in changing some of the more onerous provisions. Nevertheless, the act still implements substantial changes for nonqualified deferred compensation plans.

In August 2005, the U.S. Department of Treasury issued its first set of proposed regulations under code section 409A. In January 2006, the U.S. Chamber submitted comments responding to the proposed regulations. These comments were the third set the Chamber issued and focused on the definitions of service recipient stock, stock option extensions, and separation pay, as well as other issues. These comments followed initial suggestions that the Chamber made requesting transitional guidance for implementing the rules and asking for clarification on the definitions of deferred compensation, elections, distributions, severance pay, and equity compensation. The Chamber is continuing to work with Treasury, the White House, and Congress to ensure that regulations will address the many concerns that have arisen under these provisions. The Chamber wants to ensure that these rules are narrowly targeted to address only the perceived abuses within deferred and executive compensation arrangements.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REFORM

The employer community has long sought changes in how the U.S. Occupational Safety and Health Administration (OSHA) operates and the role it lays in workplace safety. In the 109th Congress, four bills passed the House that would have had the following results:

1. Given the Occupational Safety and Health Review Commission (OSHRC) the power to grant extensions for filing challenges (H.R. 739).

2. Increased OSHRC from three members to five (H.R. 740).

3. Restored the deference given to OSHRC by courts rather than the current ruling, which makes OSHRC subordinate to OSHA (H.R. 741).

4. Reformed the Equal Access to Justice Act to eliminate the government's substantial justification defense against paying legal fees when an employer prevails in challenging an OSHA citation (H.R. 742).

The four House-passed bills were incorporated into a series of more comprehensive OSHA reform bills introduced in the Senate (S. 2065, 2066, and 2067) that did not move after introduction. Among the provisions in the Senate bills were allowing employers to conduct self-audits, increasing the use of safety experts, and giving employers a better understanding of how to improve safety in their workplaces. This legislation was improved from earlier versions because of U.S. Chamber input to provide protection for the audit

reports so that employers would not be exposed to litigation or citations as a result.

The Chamber is also interested in a variety of other fixes to improve employers' ability to protect their employees. Among them are requiring peer review of the economic and safety basis for standards; increasing the rigor of scientific analysis in support of standards; conducting cost-benefit analysis on proposed regulations; providing more flexibility in meeting regulatory requirements by allowing alternative means of protection that are equally or more protective of workers; clarifying employers' responsibilities on multiemployer work sites; and providing penalty relief for small businesses that make good-faith efforts to comply, including relatively quick correction of the violation.

Sources for additional information: 109th Congress: Occupational Safety and Health Small Business Day in Court Act (H.R. 739); Occupational Safety and Health Review Commission Efficiency Act (H.R. 740); Occupational Safety and Health Independent Review of OSHA Citations Act (H.R. 741); Occupational Safety and Health Small Employer Access to Justice Act (H.R. 742); S. 2065 The Occupational Safety Partnership Act; S. 2066 The Occupational Safety Fairness Act; and S. 2067 The HazCom Simplification and Modernization Act.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

OSHA'S ERGONOMIC REGULATION

The U.S. Chamber led the employer community's efforts to oppose the Clinton administration's Occupational Safety and Health Administration (OSHA) ergonomics regulation on the grounds that there was insufficient science and medical understanding to support such a regulation. Because of the nature of the hazards addressed by this regulation, employers would be held accountable for injuries that could occur from activities outside the workplace. Although a final regulation was issued just after the 2000 election, the Chamber continued fighting. Shortly after the 107th Congress convened in early 2001, the Senate and House passed a joint resolution invalidating the ergonomics regulation under the never-before-used provisions of the Congressional Review Act. President Bush signed the resolution on March 20, 2001.

On April 5, 2002, Secretary of Labor Elaine Chao launched a four-pronged alternative approach to dealing with the ergonomics issue that called for the following:

1. Promulgation of industry-specific voluntary guidelines.
2. Tough enforcement measures using the Occupational Safety and Health Act's General Duty Clause.
3. Workplace outreach offering compliance assistance.
4. Ergonomics research.

Industry-specific guidelines have been issued for the nursing home, retail, and poultry processing industries. The National Advisory Committee on Ergonomics, convened as one of the four prongs, has concluded its meetings and made recommen-

dations to the secretary on topics that need further research and on how to reach out to employers more effectively.

The Chamber continues to co-chair the National Coalition on Ergonomics, the voice of the business community, throughout the development and ultimate repeal of ergonomics regulation. The Chamber will continue to monitor OSHA's activities in this area and be vigilant in opposing any attempts by the agency to overreach its authority through use of the General Duty Clause, the imposition of guidelines lacking a sound scientific basis, or other approaches. In addition, the Chamber will vigorously oppose any attempts by Democratic majorities in the 110th Congress to authorize OSHA to pursue a new ergonomics regulation.

Sources for additional information: National Coalition on Ergonomics (www.ncergo.org); Occupational Safety and Health Administration (www.osha.gov).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

PENSION ACCOUNTING

At the recommendation of the U.S. Securities and Exchang Commission, the Financial Accounting Standards Board (FASB) has undertaken a project to reconsider the method l which pensions and other benefits are reported in financial statements. Phase I of the project was recently completed. C September 29, 2006, the FASB issued the Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans" (FAS 158). Under FAS 158, companie must begin reporting the net financial status of pensions anc other benefits on their balance sheets rather than in the foo notes. In addition, plan assets and benefit obligations must b measured as of the dates of the employers' fiscal year-end an employers must use the projected benefit obligations measu of liabilities.

The requirement to report the financial status of pension pl is effective for fiscal years ending after December 15, 2006, f publicly traded entities and at the end of fiscal years ending after June 15, 2007, for all other entities. The changes in the measurement dates are effective for fiscal years ending after December 15, 2008.

In Phase II, FASB will evaluate and propose changes to the accounting standards for measuring pension and other post-employment benefit (OPEB) costs, obligations, and assets. Indications are that FASB intends to remove smoothing per ods from the measure of liabilities. FASB plans to coordinate Phase II with the International Accounting Standards Board facilitate international uniformity with the new accounting standards. FASB expects to complete Phase II of the project

approximately three years after the completion of Phase I. Phase II will likely be controversial and have significant consequences for employers with defined benefit pension plans.

On May 31, 2006, the U.S. Chamber submitted comments to FASB on its Phase I proposal. In addition, the Chamber participated in the FASB public roundtables on June 27, 2006, in Norwalk, Connecticut. The purpose of the meetings was to obtain information and opinions from a variety of those interested in the ramifications of the Exposure Draft. As FASB begins its proposal on Phase II, the Chamber will continue to work to ensure that the concerns of employers are being represented.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

MEDICAL DEVICES AND PHARMACEUTICALS

Scientific advances in and free-market strategies for prescription drugs, biologics, and medical devices are key to lowering health care costs for employers by offsetting more expensive alternatives such as hospitalizations, surgeries, and long-term care. Accordingly, in the 110th Congress, the U.S. Chamber proposes to engage in the following biopharmaceutical and medical device legislative and regulatory issues:

- Prescription Drug User Fee Act (PDUFA)–This program enables biopharmaceutical manufacturers to pay "user fees" to the Food and Drug Administration (FDA), in exchange for FDA meeting review goals intended to reduce product approval times. PDUFA's 2007 reauthorization may include new programs that increase user fees to expand post-market safety surveillance, limit direct-to-consumer ads, and fund the Critical Path Initiative. The Chamber will generally support reauthorization and closely examine proposals for new add-on programs.

- Generic biologics–Representative Henry A. Waxman (D-CA) introduced the first major legislation authorizing an abbreviated approval pathway for biologics. It will likely take a few years before legislation passes Congress. Given the strong "pro" and "con" positions within Chamber membership, during 2007 the Chamber proposes to educate on generic biologics through a white paper and a conference.

- Tax credits for workplace wellness and disease management–Iowa's Democratic Senator Tom Harkin's draft bill provides tax credits for employers offering comprehensive wellness programs. Broader legislation was intro-

duced in 2005 that also incorporated community, school and hospital provisions. The Chamber will support stand-alone legislation for workplace wellness.

- Patent reform–Senators Orrin G. Hatch (R-UT) and Patrick J. Leahy (D-VT) introduced patent reform legislation that creates a United States Patent and Trademark Office administrative process for third parties to challenge suspect patents; limits patent claims by having to prove "inequitable conduct"; ascertains "just compensation" for patent infringement; and harmonizes the United States with the world by allowing inventors who are "first-to-file" to obtain patent protection. The Chamber will analyze each of these proposals in preparation for deciding whether to support or oppose.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

VISAS AND BORDERS

Since the creation of the U.S. Department of Homeland Security in 2003, there have been many changes to the processes of obtaining visas and entering the United States for business visitors, students, tourists, and foreign employees. While necessary, these changes have resulted in delays and difficulties for visa applicants and the U.S. entities that benefit from their entry. Additional border controls, if not implemented carefully, have the potential to create serious delays and backlogs at U.S. borders.

The U.S. Chamber has testified many times before Congress and has worked diligently with the Department of Homeland Security and the State Department to deal with the issues and impacts of visa delays and denials at U.S. consular posts overseas. These issues include lost business for U.S. companies, movement of international conferences and trade shows to other countries, a decline in the number of foreign students and scholars in our universities, and difficulties of multinational companies in managing their worldwide workforces. Chamber President Tom Donohue was appointed to the Secure Borders Open Doors Advisory Committee, which first met December 6, 2006. The committee will work to improve America's welcome, develop travel documents for the 21st century, and implement "smarter screening" of travelers.

The Chamber has also worked closely with the Departments of Homeland Security and State on their implementation of the Western Hemisphere Travel Initiative, as well as the US-VISIT system of border controls, to ensure that new requirements will not have a negative impact on legitimate travel to the United States. New processes, delays, costs, and increased scrutiny of

travelers to the United States have created broad perceptions overseas that our country no longer welcomes foreign visitors. These perceptions, if not addressed, could cause significant economic loss to the United States from losses of tourist travel and spending, business and trading opportunities, and diplomatic and general goodwill in the world.

The Chamber will continue to work, on its own, through its coalitions, and through the American Chambers of Commerce overseas, to ensure that the United States remains a welcoming nation for international tourists, businesses, and scholars. The Chamber will pursue process changes with the administrative agencies, work with Congress on resource allocation and legislative changes where necessary, and continue to portray the United States abroad as "open for business."

Sources for additional information: Americans for Better Borders (www.abbcoalition.org); U.S. Visa (www.unitedstatesvisas.gov); U.S. State Department Consular Affairs (http://travel.state.gov); US-VISIT (www.dhs.gov/us-visit).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

WAGE, HOUR, AND LEAVE MANDATES AND MINIMUM WAGES

The U.S. Chamber led the fight for reform of regulations governing white-collar employee overtime eligibility. In August 2004, the Department of Labor (DOL) finalized the first major revisions of the regulations since 1954. Building on these reforms, the Chamber urges DOL to continue much-needed regulatory reform by turning to the Family and Medical Leave Act (FMLA). Congress enacted FMLA in 1993 to provide unpaid leave for employees to care for family members or deal with "serious health conditions." Implementing regulations issued by DOL, however, have resulted in an unintended expansion of coverage under FMLA, unnecessary administrative burdens and costs, excessive workplace disruptions, and growing fraud and abuse.

In March 2002, the U.S. Supreme Court struck down a portion of the FMLA regulations, saying they were in conflict with the act. DOL has the authority to revise the implementing regulations to dramatically limit fraud as well as the administrative burdens imposed by the current regulations. Proposing much-needed reforms to these regulations should be among DOL's top priorities. Despite all the difficulties businesses face in implementing FMLA, some in Congress have proposed expanding the act or enacting new leave mandates. For example, during the 108th Congress, expansion legislation included the extension of FMLA to employers with as few as 25 employees and the addition of various categories of leave, such as time off to attend teacher conferences, to care for an ill domestic partner, or to address domestic violence. None of these bills was enacted. The Chamber is committed to the proposition that no consideration be given to FMLA expansion

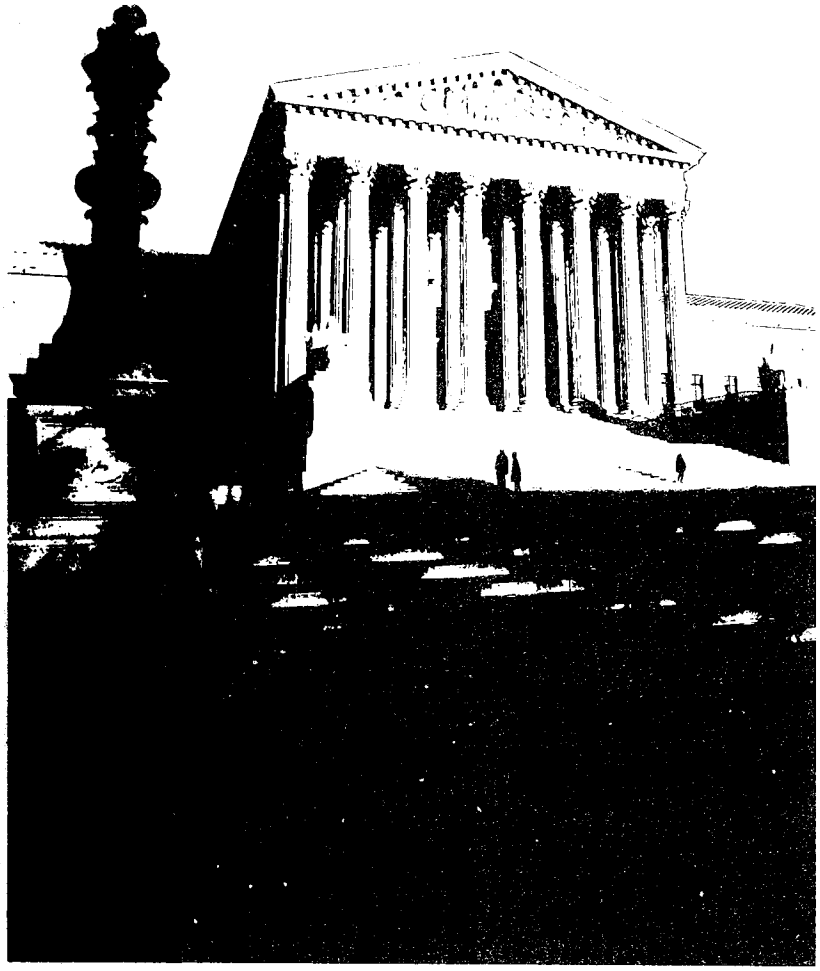
until flaws in the current law and regulations are corrected. Moreover, the Chamber considers further expansion of FMLA to smaller employers inappropriate.

The 109th Congress saw numerous proposals to increase the federal minimum wage by $2.10 per hour. The 110th Congress, under Democratic majorities for the first time in twelve years, is expected to make increasing the minimum wage its first order of business. President Bush has expressed his willingness to work with Democratic leaders to develop a package that recognizes the impact this will have on small businesses.

The Chamber will continue to oppose an increase in the minimum wage. However, there may be companion legislation to help mitigate the adverse effect of a mandated wage increase on businesses, including provisions long supported by the Chamber.

Source for additional information: FMLA Technical Corrections Coalition (www.fixfmla.org).

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.



LEGAL REFORM

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ADVERSE LEGISLATION

The shifting of the House and Senate to Democratic leadership following the 2006 mid-term elections may reinvigorate the efforts of the plaintiffs' bar to enact a number of policy initiatives adverse to the business community. Although the elections have arguably resulted in the emergence of a more moderate faction in the Democratic Party and a more conservative minority Republican Party, the legal reform community may face several challenges in the 110th Congress:

- Criminalize product liability—During the last several years, the plaintiffs' bar and consumer groups have supported proposals providing criminal penalties for executives and employees who "knowingly and recklessly" allow defective products into interstate commerce. However, adding criminal sanctions to product liability law is fraught with constitutional problems, and could result in less safe products because it could encourage corporate executives to turn a blind eye to product risks. The U.S. Chamber will continue to educate policymakers on the difficulties of criminalizing product liability.

- Rollback federal preemption—The trial bar perennially desires to limit the availability of federal preemption as a defense against state-level civil litigation. There may be attempts in the 110th Congress to narrow federal preemption protections for specific, targeted industries. Furthermore, some in Congress oppose the Bush administration's current efforts to engage in legal reforms via the regulatory process, and may attempt to reverse them. The Chamber will resist efforts to unduly restrict federal preemption.

- **Limits on alternative dispute resolution**—Alternative dispute resolution (ADR) mechanisms such as arbitration and mediation remain key weapons in the fight against excessive litigation. The U.S. Supreme Court has stated that arbitration is usually cheaper and faster than litigation; arbitration typically has simpler procedural and evidentiary rules; and, it is often flexible with regard to scheduling times and places of hearings and discovery devices. Unfortunately, ADR mechanisms have been under attack by the plaintiffs' bar at both the federal and state levels for a number of years. The Chamber will continue to oppose legislation that threatens the availability of ADR mechanisms.

Sources for additional information: The Institute for Legal Reform, (www.instituteforlegalreform.com); the Chamber, (www.uschamber.com); the American Arbitration Association, (www.adr.org); (www.overlawyered.com).

CHAMBER CONTACT: U.S. CHAMBER INSTITUTE FOR LEGAL REFORM AT 202-463-5724 OR MATT WEBB AT MWEBB@USCHAMBER.COM.

ASBESTOS LITIGATION AND MASS SCREENING REFORM

As a result of the widespread use of asbestos in manufacturing before the 1970s, tens of thousands of Americans were subject to occupational exposure, placing them at risk for developing asbestos-related diseases including asbestosis and mesothelioma. Under current law, asbestos lawsuits have become very profitable for a few plaintiffs' lawyers. Companies have paid out more than $70 billion on asbestos injury claims, making these cases the most expensive type of litigation in U.S. history. Additionally, the asbestos litigation system has forced bankruptcy on more than 80 companies, costing tens of thousands of Americans their jobs. Total corporate asbestos liability is expected to exceed $200 billion.

The plaintiffs' bar has extended its mass tort business model developed in asbestos litigation into other areas of product liability, including silica, benzene, welding rods, diet drugs and other pharmaceuticals. The crux of this business model is a mass medical screening process in which lawyers, doctors and screening companies conduct tests solely to recruit claimants for lawsuits. The assembly-line process enables plaintiffs' lawyers to quickly and inexpensively generate such a high volume of claimants that many defendants opt to settle rather than risk time and money on a trial. Congressional testimony has shown that the mass screening process in silica and asbestos litigation is rife with fraud and abuse. There is reason to believe the wrongdoing extends to mass screening in other areas of litigation as well.

There is little debate over the need to do something about asbestos litigation; there is much discussion, however, about the

appropriate solution. The U.S. Chamber is working to unify the business community in support of state and federal legislation to deal with the asbestos litigation crisis. The Chamber is also committed to ending fraud and abuse in the mass medical screening process by shining a public spotlight on this blatant exploitation of our civil justice system, and by seeking appropriate legislative remedies.

Sources for additional information: The Institute for Legal Reform, www.instituteforlegalreform.com; the Chamber (www.uschamber.com); (www.overlawyered.com); Rand Corporation, (www.rand.org).

CHAMBER CONTACT: U.S. CHAMBER INSTITUTE FOR LEGAL REFORM AT 202-463-5724 OR MATT WEBB AT MWEBB@USCHAMBER.COM.

EXPORT OF LAWSUIT ABUSE

Europeans have tended to view modern American patterns of lawsuit abuse with great disdain. However, a number of prominent plaintiffs' firms have set their sights on overseas opportunities, with the expectation they can persuade European policymakers to alter features of their legal systems to make them more litigation friendly. Denmark, England, France, Finland, Germany, Ireland, Italy, and Norway have all considered or adopted new "class" or group litigation laws in the last year, and the European Commission released a so-called Green Paper strongly proclaiming its commitment to enhancing and encouraging private antitrust enforcement in the member states.

Perhaps more significantly, the structural safeguards that have long protected European courts from American-style lawsuit abuse— "loser pays" rules, limits on discovery, the absence of contingency fee relationships, prohibition on exemplary or punitive damages, and the use of judges rather than juries to apportion damage awards—are beginning to erode. By contrast, the power of European plaintiffs' counsel to initiate large-scale, high-exposure litigation has never been greater. The international plaintiffs' bar is becoming increasingly adept at the practice of cross-border litigation.

At the same time, foreign plaintiffs are taking advantage of the unusually liberal features of the American civil justice system to file lawsuits in U.S. courts, even when disputes involve entirely foreign conduct. A growing number of foreign plaintiffs have invoked the Alien Tort Statute as a way of extracting payment from international companies that do business in the United States. Plaintiffs often link reputable

companies to sensational claims filed for political purposes involving events over which the companies had no control.

Europe presently stands at the same policy crossroads where America stood forty years ago. The U.S. Chamber is working in international venues to make policymakers aware of the risk posed by Europe's continued adoption of American class action and other U.S.-style litigation principles. In addition, the Chamber Institute for Legal Reform is leading the Coalition to Curb Global Forum Shopping to create awareness among public and private decision makers of the serious problems presented by global forum shopping, and to convince courts to show self-restraint in interpreting laws with extraterritorial elements.

Sources for additional information: U.S. Chamber Institute for Legal Reform (www.instituteforlegalreform.com); the Chamber (www.uschamber.com).

CHAMBER CONTACT: U.S. CHAMBER INSTITUTE FOR LEGAL REFORM AT 202-463-5724 OR LINDA KELLY AT LKELLY@USCHAMBER.COM.

SECURITIES CLASS-ACTION LAWSUIT REFORM

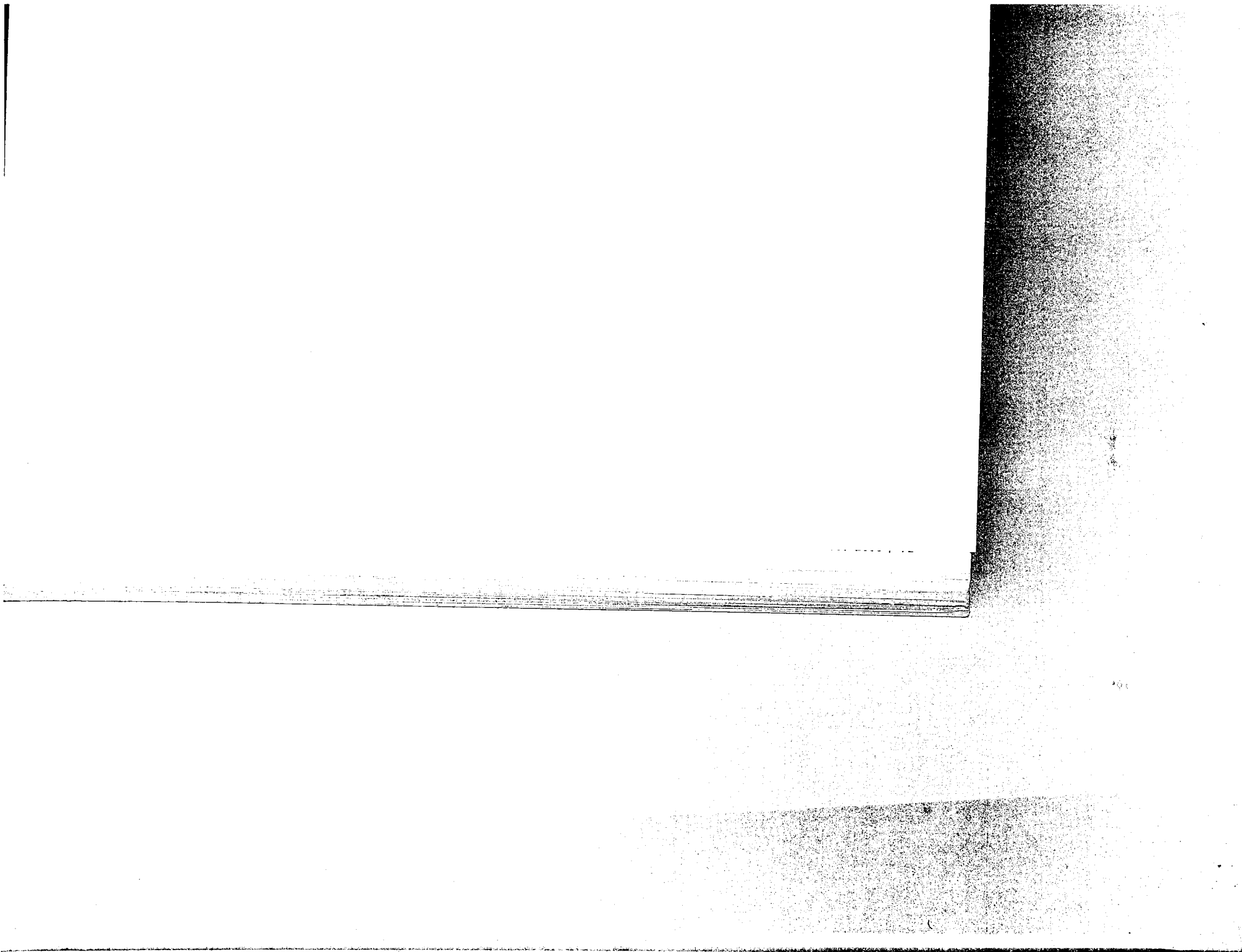
Congress passed some of the most sweeping class-action-related reforms ever enacted: the Private Securities Litigation Reform Act (PSLRA) in 1995 and the Securities Litigation Uniform Standards Act (SLUSA) in 1998. Both statutes focused on meritless litigation under the securities laws. Despite the fact that both acts were passed with overwhelming bipartisan majorities, the plaintiffs' bar and a few consumer advocates continue to push for the repeal of those statutes.

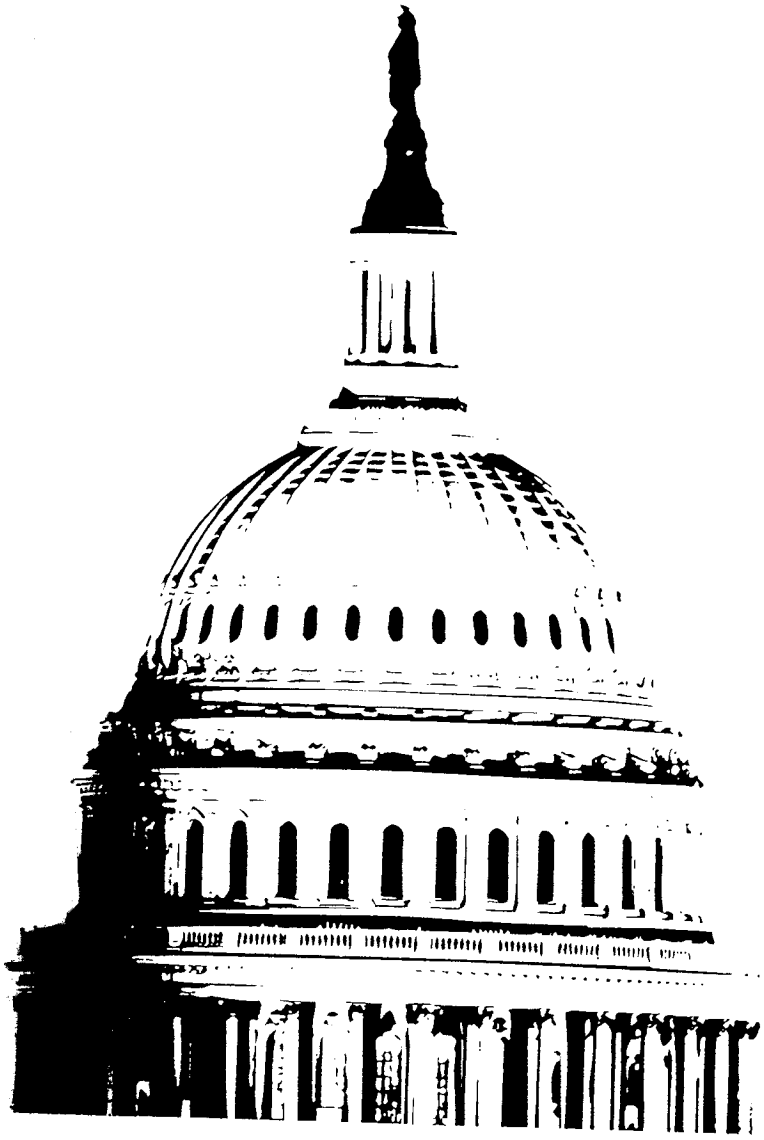
Although the reforms promulgated in the PSLRA and the SLUSA were significant, they are not without problems. Studies conducted for the Institute for Legal Reform show securities class-action lawsuits often fail to protect individual investors. The sheer size of potential damage awards in modern securities cases can force many defendants to settle these cases, whether or not true liability exists, because continuing with the litigation would be too risky and would turn into a "bet the company" proposition. Many experts believe the size and frequency of damage settlements in securities class-action lawsuits sets the United States apart from other major financial centers and is an important factor in the declining competitive position of U.S. securities markets.

The U.S. Chamber will continue to oppose legislation that would undo the protections gained under the PSLRA and the SLUSA, with a longer-term goal of fundamentally revising the structure of securities litigation to ensure wrongdoing is deterred and punished, the current burden on small investors eliminated, and American capital markets are able to compete and win in the global marketplace.

Sources for additional information: U.S. Chamber Institute for Legal Reform (www.instituteforlegalreform.com); the Chamber (www.uschamber.com); Stanford Law School Securities Class Action Clearinghouse (http://securities.stanford.edu).

CHAMBER CONTACT: U.S. CHAMBER INSTITUTE FOR LEGAL REFORM AT 202-463-5724 OR CHERYL EVANS AT CEVANS@USCHAMBER.COM.





INTELLECTUAL PROPERTY AND PATENT REFORM

USCC 55715

DIGITAL INTELLECTUAL PROPERTY

The U.S. Chamber's objective is to promote strong digital intellectual property protection for businesses.

Exciting digital content is essential for broadband and digital television (DTV) to flourish. Consumers want to download movies and music, access news articles and databases, and watch DTV. However, without adequate digital copyright protection, content producers will be hesitant to release their products digitally. Thus, the Chamber vigorously advocates for the protection of digital intellectual property. Through membership education and by hosting forums with lawmakers, the Chamber has brought this issue to the forefront of its technology agenda and will aggressively promote this issue during the 110th Congress. Moreover, the Chamber supports full funding for the United States Patent and Trademark Office to ensure that it can implement necessary reforms aimed at promoting e-commerce.

The Chamber promotes market-based and technological solutions to digital intellectual property protection. These solutions should avoid costly government regulations and incorporate the fair use of content by citizens. Policies that balance copyright protection with fair use will spur broadband deployment by allowing for the development of enhanced Internet services.

Investment and innovation rest upon strong intellectual property protection for businesses. Accordingly, the Chamber opposes the ability of state entities, such as state universities, to use their constitutional protection from lawsuits to infringe freely upon the intellectual property of others. By using sovereign immunity in this manner, states collectively discourage research and development of new Internet-based products ar

services. Thus, the Chamber supports a comprehensive federal policy that protects intellectual property from all types of infringement.

The Chamber will do the following:

- Fight for robust enforcement of intellectual property laws, domestically and abroad.
- Promote industry solutions to new copyright protection challenges.
- Support full funding for the United States Patent and Trademark Office.
- Lobby Congress for legislation to protect content owners from misappropriations by state entities.

CHAMBER CONTACT: TELECOMMUNICATIONS & E-COMMERCE POLICY AT 202-463-5949 OR
JASON GOLDMAN AT JGOLDMAN@USCHAMBER.COM.

GLOBAL INTELLECTUAL PROPERTY THEFT: PIRACY AND COUNTERFEITING

Counterfeiting and piracy cost the U.S. economy $200 billion to $250 billion per year and a total of 750,000 American jobs, and pose a real threat to health and safety. They have far-reaching consequences for our lives and our economy. From DVDs and CDs, shampoo, and batteries to car parts, prescription drugs, and electrical equipment—every product in every industry is vulnerable.

The U.S. Chamber is fighting back to protect businesses and consumers. With over twenty staff dedicated to the issue, and a broad-based Coalition Against Counterfeiting and Piracy composed of associations and businesses representing a wide range of industry sectors, the Chamber is leading an aggressive global effort to thwart this growing threat.

When the Chamber's efforts began, the business community was not organized, detection and enforcement were inadequate, and the United States was losing ground internationally. Since that time, the Chamber has been a leader in making intellectual property protection a national priority. The Chamber is continually expanding the scope and intensity of its multimillion-dollar program through a global two-part strategy of education combined with detection and enforcement.

On the education front, the Chamber will conduct research both in the United States and abroad to measure the scope of the problem. Using these data, the Chamber will work to reframe the debate about counterfeiting and piracy by educating Congress, foreign government officials, businesses, consum-

ers, and the media. These education efforts include Capitol Hill outreach; small business educational events around the country; global business, youth, and consumer education campaigns and events; and aggressive media outreach.

The Chamber is also actively engaging to increase detection and enforcement of counterfeiting and piracy crimes globally. Since the early 1990s, trade in counterfeits has grown at eight times the speed of legitimate trade. Traditionally, law enforcement has not had the resources or the information to protect intellectual property rights and fight counterfeiting and piracy. The Chamber is changing that. We are working on Capitol Hill to increase resources for the departments of Justice and Homeland Security to fight this problem and to support legislation that increases penalties for counterfeiters and pirates. The Chamber is also working to get additional resources and tougher laws at the state level through model legislation and advocacy.

American businesses rely on a variety of international IP protection regimes and national IP enforcement mechanisms, including the World Trade Organization (WTO) trade-related intellectual property rights (TRIPS) agreement and World Intellectual Property Organization (WIPO) treaties and protocols.

Internationally, the Chamber supports the full implementation of TRIPS obligations by all WTO members and opposes reopening, weakening, or otherwise undermining the existing TRIPS agreement in any new round. WTO accession by new members should imply full implementation of TRIPS on the date of accession, without transition. However, TRIPS should not be used to freeze in place limitations on market access for information products and services, such as motion-picture

distribution across borders. Complementary market-access initiatives should be undertaken on a bilateral, regional, and multilateral basis.

There is an acute need for an international mechanism to combat piracy on the Internet. Relevant WIPO treaties on digital commerce have yet to be ratified by a sufficient number of countries to enter into force. In addition, rapid innovation outpaces the antiquated procedures at many national IP agencies, rendering them unable to establish prompt and strong protections.

These global efforts alone are not sufficient. Unwilling to sit on the sidelines, the Chamber has programs in key port cities that bring together federal, state, and municipal enforcement officials from agencies such as the U.S. Department of Justice, Immigration and Customs Enforcement, Customs and Border Protection, and the Federal Bureau of Investigation, police, prosecutors, and district attorneys to share intelligence and resources. The Chamber has even hired investigators to assist law enforcement officials in building cases against these criminals.

All of these domestic efforts, however, will never be successful without global intelligence capabilities to track criminal networks back to their origins. Recognizing this as a significant gap, the Chamber launched a partnership with Interpol, the world's largest police organization, with 186 member countries. The goals of this partnership are to create a new crime unit dedicated to increasing international law-enforcement capabilities and improve the exchange of intelligence on counterfeiting and piracy crimes through a global database.

Finally, to increase prosecutions of these criminals, the Chamber is working to educate prosecutors and the judiciary on the effects of counterfeiting and piracy. Abroad, the Chamber is conducting training for judges, customs officials, and members of other targeted groups to help deter the effects of counterfeiting and piracy globally.

CHAMBER CONTACT: GLOBAL ANTI-COUNTERFEITING AND PIRACY INITIATIVE AT 202-463-5554 OR CAROLINE JOINER AT CJOINER@USCHAMBER.COM.

UNITED STATES PATENT AND TRADEMARK OFFICE

The U.S. Chamber's objective is to support full funding for the United States Patent and Trademark Office (PTO).

The PTO grants patents for the protection of inventions. Patent rights granted by the government allow holders, for a limited period of time, to exclude others from making, using, or selling the registered inventions. Patents enable the invention of new products, reward the discovery of new uses for existing processes or items, and generate jobs for millions of Americans. Thus, the PTO has become critical to U.S. economic success because it protects new ideas and investments in innovation and creativity.

Of specific interest to the business community is the issue of funding for the PTO. During the past twelve years, more than $650 million has been diverted from the PTO to other government programs, creating a significant strain on the efficiency and capabilities of the office. This diversion of funds has an adverse effect on the quality of patents, resulting in expensive litigation and uncertainty about who has proper legal rights to new products or processes. Moreover, unless changes are made at the PTO, processing time for a patent is expected to increase from 24.6 months in 2004 to 45 months by 2009. This would be devastating to the U.S. economy.

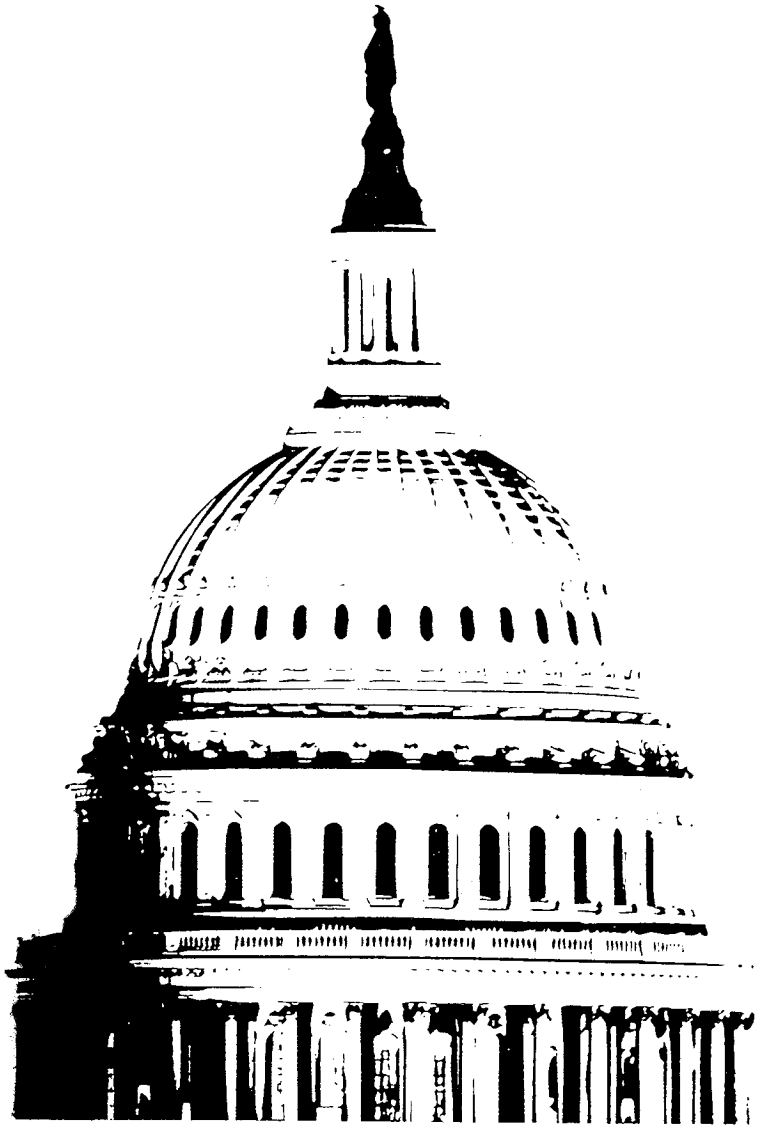
To address these concerns, the PTO proposed sweeping reforms in its 21st Century Strategic Plan. The Chamber supports this proposal. If fully funded, the PTO predicts a processing time of just twenty-seven months in 2009.

The private sector has long signaled its willingness to bear the financial burden of reforming the PTO, but only if these additional revenues are made available for PTO reforms. Thus, the Chamber supports legislation ending fee diversion, while increasing user rates to fund PTO reform.

The U.S. Chamber will do the following:

- Support full funding for the PTO.
- Lobby Congress for legislation that would end PTO fee diversion.
- Work with other coalitions, associations, and businesses to achieve PTO reform.

CHAMBER CONTACT: TELECOMMUNICATIONS & E-COMMERCE POLICY AT 202-463-5949 OR JASON GOLDMAN AT JGOLDMAN@USCHAMBER.COM.



INTERNATIONAL POLICY AND FREE TRADE

USCC 55724

FREE TRADE AGREEMENTS

Since presidential Trade Promotion Authority was restored in 2002, the United States has embarked on an unprecedented effort to open foreign markets to U.S. exports by expanding its network of free-trade agreements (FTAs). Congress has approved FTAs with a dozen countries: Australia, Bahrain, Chile, the Dominican Republic, Morocco, Oman, Singapore, and the five Central American countries. The early results have been outstanding. For example, trade between the United States and Chile nearly doubled in the first two years of implementation of the bilateral FTA between the two countries, far surpassing expected results.

FTAs benefit U.S. businesses, workers, and consumers in significant ways. These agreements do much more to open foreign markets to U.S. exporters and investors than vice versa, because the U.S. marketplace is already one of the most open in the world. With the European Union joining East Asian and Latin American countries in negotiating dozens of FTAs, U.S. firms run the risk of being placed at a competitive disadvantage unless the United States moves forward aggressively with its own FTAs.

Nonetheless, it is critical that FTAs meet certain criteria if they are to maximize their potential for business opportunities, economic growth, and new jobs. First, FTAs must be comprehensive, with all goods and services placed on the negotiating table, including sensitive products. Seeking exclusions for particular commodities from the beginning can undermine the commercial value of an FTA. Second, FTAs must be ambitious, with market-opening disciplines on services, investment, and intellectual property that go far beyond the relatively modest

commitments made in the context of the World Trade Organization.

Recently, negotiations have been successfully concluded for high-standard FTAs with Peru and Colombia, and negotiations with Panama are virtually concluded. These countries are strategic partners of the United States in free-market development, antinarcotics efforts, and a variety of other ways, and they are significant markets for U.S. workers, companies, and farmers.

Also, negotiations are under way with Korea and Malaysia, two countries that rank among the top-ten U.S. trading partners. In the case of Korea, new FTA would be the largest concluded by the United States in more than a decade, affording major new market opportunities.

Source for additional information: Office of the U.S. Trade Representative (www.ustr.gov).

CHAMBER CONTACT: INTERNATIONAL POLICY DIVISION AT 202-463-5460.

REGULATORY DIVERGENCE

Half a century of progress toward the elimination of tariffs and quotas around the globe has helped generate prosperity in the United States and abroad. However, protectionists are honing new tools that threaten the long-term competitiveness of U.S. companies in global markets. Increasingly burdensome and interventionist policies in the areas of antitrust law, intellectual property (IP), standards (e.g., technology, environment, health, and safety), state-owned enterprises, subsidies, and investment rules are hindering the operation of efficient markets and preventing some of America's most successful and innovative companies from commercializing their technologies in foreign markets.

Left unchecked, regulations that erect de facto barriers to trade—done in a way that circumvents existing bilateral and multilateral trade disciplines—will result in long-term harm to U.S. competitiveness, innovation, and economic growth. Not only will consumers be disadvantaged, but the ability of U.S. companies to compete on equal terms will be jeopardized.

To maintain U.S. leadership, the U.S. government and the business community must work together to develop strategies that promote market-oriented, pro-trade policies with foreign governments. A holistic approach that captures the different types of nontariff barriers constitutes one key to overcoming the current piecemeal and sporadic efforts by individual companies, industries, and different government agencies.

Governments write the rules that govern the competitive playing field, but the U.S. Chamber is working to make open competition a priority for governments. With this goal in mind, the Chamber is doing the following:

- Building support for competitive markets around the world and awareness of the threat posed to them by nontariff barriers.
- Supporting the movement of investment capital free from unnecessary government regulation.
- Ensuring that competition law does not become a mechanism for confiscating or devaluing intellectual property rights, advancing protectionist goals, and is applied in a manner that reflects principles of comity.
- Advocating the mutual recognition or harmonization of technical standards.

CHAMBER CONTACT: INTERNATIONAL POLICY DIVISION AT 202-463-5460.

TRADE PROMOTION AUTHORITY

After an eight-year lapse, the president signed trade promotion authority (TPA) into law as part of the Trade Act of 2002. With that authority, U.S. negotiators are crafting trade deals that knock down barriers to U.S. products and services overseas while guarding U.S. markets from unfair trade. Exports of goods and services now top $1.2 trillion annually and support more than 12 million good-paying jobs. Consumers benefit from expanding access to foreign markets as well.

On June 30, 2007, TPA will lapse, and with it, the ability of the United States to negotiate agreements to open foreign markets will disappear. The U.S. Chamber is committed to leading the business community's broad-based effort to prevent such an outcome.

Using TPA, U.S. trade negotiators should focus on four key priorities in 2007:

- Exert leadership in the multilateral trade talks known as the Doha Development Agenda (see separate entry under World Trade Organization). Hammering out a consensus among the diverse and conflicting interests of the 150 member nations of the World Trade Organization (WTO) will not be easy, but TPA has created the tools to make U.S. leadership in this realm possible. With more than 95% of the world's consumers living outside U.S. borders, a new global trade pact is critical to our economic future.

- Push for completion of additional free trade agreements (FTAs) (see separate entry under Free Trade Agreements). With three agreements pending congressional approval—

and deals with Korea and Malaysia in the wings—the Chamber will lead an aggressive advocacy drive for their approval.

- Continue to press for full and proper implementation of new FTAs with Australia, Bahrain, Chile, the Dominican Republic, Morocco, Oman, and Singapore, as well as the five Central American countries. The early results of these FTAs suggest that the Office of the U.S. Trade Representative has established excellent standards for FTAs. Implementing these pacts sends a clear signal to countries around the world that the United States is back in the trade agreement arena.

- Vigorously enforce U.S. trade laws. U.S. trade laws have two core purposes. First, to protect U.S. business from unfairly traded goods and services and, second, to open foreign markets to U.S. goods and services. Politically, it is impossible to secure public support for opening foreign markets (which necessarily entails opening the U.S. market) unless we ensure that foreign goods and services are entering the U.S. market fairly.

Source for additional information: Office of the U.S. Trade Representative (www.ustr.gov).

CHAMBER CONTACT: INTERNATIONAL POLICY DIVISION AT 202-463-5460.

UNILATERAL SANCTIONS AND OTHER TRADE RESTRICTIONS

During the past few decades, policymakers in Congress and the executive branch have repeatedly imposed unilateral economic sanctions on a variety of countries for foreign-policy purposes. These sanctions have taken the form of import bans, export controls, restrictions on U.S. investment and expatriate activity overseas, and financial controls. All too often, they have been undertaken for ill-defined purposes or with little consideration of their impact. Rather than modifying the behavior of those countries, the sanctions have often damaged U.S. economic interests at home and overseas. The vacuum created by unilateral sanctions is generally filled by our trade competitors, particularly our U.S. allies.

Sanctions are generally imposed with little understanding of or concern for their domestic economic consequences. To be ever marginally successful, economic sanctions must be multilateral; but because all countries define their foreign-policy interests differently, there is rarely consensus in favor of sanctions. The United States cannot afford to continue a policy of unilateralism when it comes to economic sanctions.

U.S. international economic interests should be viewed as part and parcel of U.S. foreign relations and security interests. In today's increasingly competitive global economy, U.S. companies are rarely the predominant suppliers of goods and technology. As technology has become more diffuse, the cumulative effect on the U.S. domestic economy of markets lost simply to symbolically distance our country from another country's behavior is a luxury the United States can no longer afford.

Source for additional information: USA*Engage **anti-unil**ateral sanctions coalition (www.usaengage.org).

CHAMBER CONTACT: INTERNATIONAL POLICY DIVISION AT 202-463-5460.

WORLD TRADE ORGANIZATION AND THE DOHA DEVELOPMENT AGENDA

When the United States took the lead in launching the Uruguay Round of multilateral trade negotiations that resulted in the World Trade Organization (WTO) agreement, it recognized that the nondiscriminatory worldwide reduction in trade barriers and the application of new trade rules would bring substantial benefits for U.S. companies and their workers.

Currently, the Doha Development Agenda, a similar effort to lower trade barriers through multilateral negotiations, is advancing under the aegis of the WTO. Key U.S. objectives in these global negotiations include reducing tariffs on industrial and consumer goods, opening foreign markets to U.S. agricultural exports, imposing new disciplines on countries that heavily subsidize their farm sectors (especially the European Union and Japan), and creating a more open, rules-based framework for the international provision of services. The Doha negotiations were launched in 2001, but they reached an impasse in mid-2006. Negotiators are working to revive the talks.

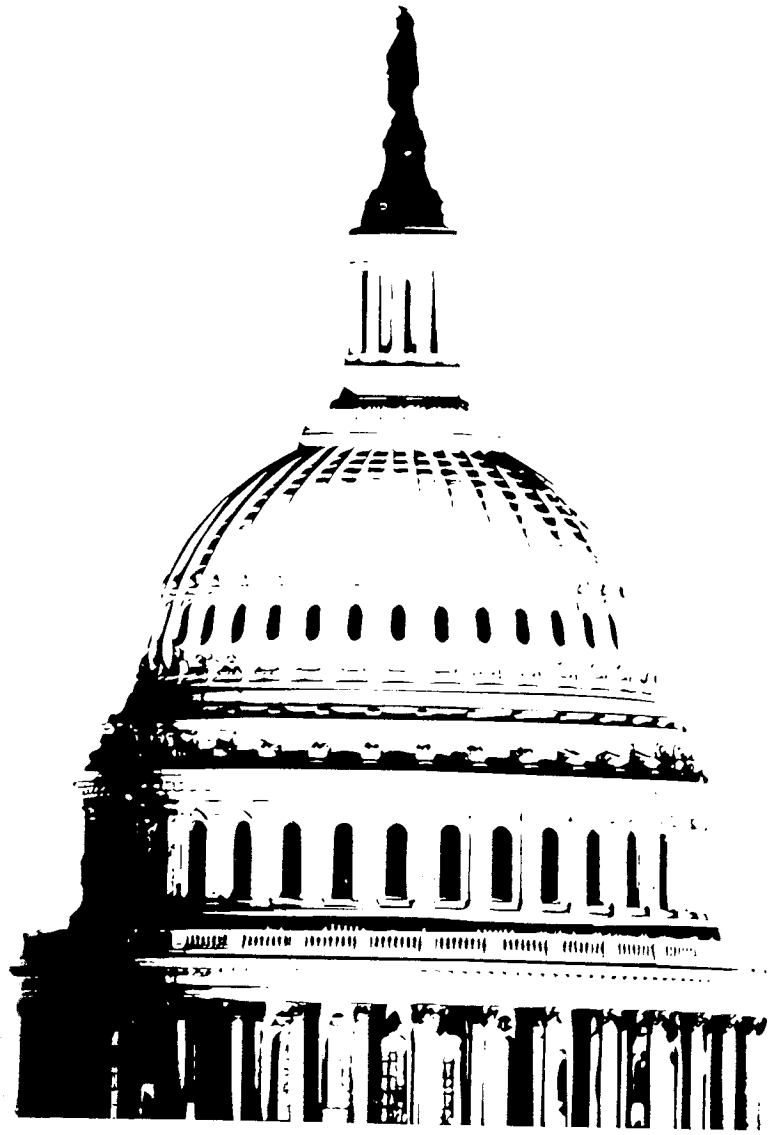
While the WTO provides a forum for multilateral negotiations to reduce trade barriers, it also establishes and enforces rules for the global trading system. Like other WTO signatories, the United States is subject to WTO disciplines on its own "market access" trade laws, such as Section 301. Although the WTO agreement did not require material changes in U.S. trade law per se, it did establish for the first time a multilateral review process for the application of U.S. (and other nations') trade laws to remedy unfair or restrictive international trade practices. Such reviews require the United States and other authori-

ties to consider multilateral reactions to any unilateral trade remedy actions they might take.

The United States has benefited from this discipline, prevailing in a disproportionate share of disputes subject to these processes. Still, such reviews of unilateral action have reduced the amount of leverage the United States and other individual nations can bring to bear on their competitors to open their markets. While Congress has attempted to recoup lost leverage through various statutory means, the application of global disciplines all but guarantees a challenge to these means when they are employed.

Source for additional information: Office of the U.S. Trade Representative (www.ustr.gov); WTO (www.wto.org).

CHAMBER CONTACT: INTERNATIONAL POLICY DIVISION AT 202-463-5460.



SECURING AMERICA'S FUTURE IN TECHNOLOGY

USCC 55735

BROADBAND

The U.S. Chamber's objective is to advocate for the enactment of a comprehensive national broadband policy.

Broadband applications and services have the power to transform the American economy by spurring investment and innovation in e-commerce, education, health care, entertainment, government, and almost every other sector of the American economy. The Chamber believes the nation's position as a leader in technology and innovation depends upon the establishment of a clearly defined vision coupled with a commitment, both public and private, to invest in future infrastructure and applications of broadband technologies. Specifically, the Chamber advocates for the following:

- Broadband—The Chamber recognizes that increased demand for broadband is critical to the development of new applications and services. Unfortunately, the nation's telecommunications laws have failed to keep pace with advances in technology, stifled new investment, and hindered the deployment of new technologies. To educate policymakers, the business community, and the public about the need for updated telecommunications and the importance of broadband to the U.S. economy, the Chamber has formed the TeleCONSENSUS coalition.

- Right-of-way procedures—Current right-of-way procedures often discourage companies from investing in new broadband infrastructure. The Chamber maintains that the federal government should streamline right-of-way procedures at the federal, state, and local levels.

- Spectrum allocation and management—Businesses and consumers increasingly rely on wireless devices, such as cell phones. This demand calls for additional frequencies to deliver content. Yet the artificial scarcity of spectrum deters companies from deploying new wireless technologies. The federal government should develop a comprehensive, unified, national spectrum management strategy designed to reduce the artificial scarcity of spectrum.

The Chamber will do the following:

- Host forums on the importance of broadband to the U.S. economy.
- Recruit new trade associations, chambers of commerce, telecommunications providers, equipment manufacturers, businesses, and consumers for TeleCONSENSUS.
- Lobby Congress and the administration to pass updated telecommunications laws during the 110th Congress.

CHAMBER CONTACT: TELECOMMUNICATIONS & E-COMMERCE POLICY AT 202-463-5949 OR
JASON GOLDMAN AT JGOLDMAN@USCHAMBER.COM.

E-COMMERCE

The U.S. Chamber's objective is to support policies that advance growth of e-commerce while respecting consumers' privacy. E-commerce thrives as consumers use the Internet to shop and conduct research, and companies use it to purchase goods and services. For e-commerce to continue growing, electronic retailers will require assurances that barriers to doing business are minimal and any regulations that do exist are predictable and consistent. Disparate laws and regulations among jurisdictions can increase the costs for companies to provide goods to consumers and prevent new ventures from forming.

Privacy numbers among the issues the U.S. Chamber will address regarding e-commerce. Policymakers are currently engaged in a debate about the appropriate use of consumers' personal information. During the past several years, this debate has encompassed how information is collected and handled through the Internet and how the entire business community uses personally identifiable information. The Chamber supports policies that protect consumers' privacy without unduly burdening American businesses.

The Chamber will do the following:

- Continue to oppose overly burdensome regulations that would stifle the growth of e-commerce.
- Hold forums with policymakers at the federal and state levels to study the complexities of the privacy issue and examine the benefits of a uniform national standard on the collection and use of personally identifiable information.

- Organize the online community to create industry solutions that meet the increasing problems of spam and spyware.

- Support Federal Trade Commission reforms that encourage businesses to deploy e-commerce services.

CHAMBER CONTACT: CONGRESSIONAL AND PUBLIC AFFAIRS AT **202-463-5600** OR MICHELLE LOPEZ AT MLOPEZ@USCHAMBER.COM.

EDUCATION AND WORKFORCE DEVELOPMENT

The U.S. Chamber has long recognized the critical role of quality education and workforce development in keeping American business competitive. In the knowledge-based, global economy of the 21st century, a well-educated workforce is the key to innovation, economic development and a U.S. economy that remains the world's leader.

The Chamber is stepping up its efforts on education and workforce preparedness to ensure that students have a strong academic foundation to meet the workforce needs of employers today and in the future.

Many challenges face our workers and employers today:

- Businesses spend billions of dollars each year to train new employees and remediate the educational skill gaps of those hired.
- The retirement of 77 million baby boomers will make the gap even worse, creating an even more acute skills shortage.
- By 2010, approximately 80% of all jobs will require skilled workers.
- The United States ranks sixteenth among twenty developed nations in the percentage of students who complete high school.

The growing skills shortages evident today and the clear demographic trends require us to raise the involvement of

the Chamber to a much higher level of engagement. The Education, Employment and Training Policy Committee and the Institute for a Competitive Workforce will leverage the influence of state and local chambers and member companies to focus on educating and training an effective workforce.

It is widely recognized that the business community will have a large role to play in these discussions at the national, state, and local levels as policies are formulated.

The Chamber will pursue strategic education and workforce development policies and programs focused on strengthening U.S. education performance and workforce competitiveness, including but not limited to the reauthorization of the No Child Left Behind Act, the 2002 law that increases accountability for student performance.

The Chamber encourages strong involvement of local chambers of commerce and businesses in the review and oversight of the publicly funded systems supported by these education and workforce laws. Chambers of commerce at the state and local levels must ensure that the views of small and medium-sized businesses are heard on these critical policy decisions.

The Chamber will also lobby for reauthorization of the Higher Education Act, the Workforce Investment Act, funding for teacher improvement programs and for passage of the President's American Competitiveness Initiative to increase the number of engineers and scientists. Another Chamber coalition, Tapping America's Potential, will work to double the number of graduates in science, technology, engineering, and math by 2015.

In February, the Chamber will issue a report card that assesses each state's K–12 education system and makes recommendations for change.

CHAMBER CONTACT: LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS DIVISION AT 202-463-5522.

INTERNATIONAL FREE TRADE

An efficient, predictable, and timely export control process is essential to U.S. national security and fundamental to our global competitiveness. The current export controls system is an outdated, slow, and over-regulated process that impedes the sharing of critical technology with our allies and weakens our defense industrial base.

The U.S. Chamber supports an export controls system that enhances national security and yet ensures that U.S. companies remain competitive by establishing a multilateral approach that facilitates greater military interoperability with our allies and places fewer burdens on U.S. exporters.

Particularly affected by this process are second- and third-tier contractors and small businesses that historically provide more than 50% of all sales.

To improve the process, the Chamber will work with industry, Congress and the administration to shape, promote and implement a modern export control policy.

CHAMBER CONTACT: HOMELAND SECURITY AT 202-463-5978 OR JACK MORTON AT JMORTON@USCHAMBER.COM.

GUARD AND RESERVE ISSUES

In this time of increased deployment of U.S. troops around the world, the U.S. Chamber recognizes that the strong relationship between employers and National Guard and Reserve forces is more important than ever. To that end, the Chamber urges the U.S. Department of Defense (DoD) to work with the private sector to develop strategies to enhance the predictability of mobilizations and demobilizations of the National Guard and Reserve. By doing so, the military will not only recognize the important role the private sector plays but also continue to build employer support for our military.

The Chamber is committed to working with Capitol Hill and DoD policymakers to build a predictable employment structure. The predictable deployment of the Guard and Reserve is the key to maintaining and building business support.

The Chamber looks forward to continuing to improve the strong working relationship between employers and the Guard and Reserve community. To help employers understand how the DoD intends to use the Reserve component moving forward, the Chamber will continue working with the Employer Support of the Guard and Reserve Office and other organizations to distribute the Reserve Component message to local and regional employers.

CHAMBER CONTACT: HOMELAND SECURITY AT 202-463-5978 OR JACK MORTON AT JMORTON@USCHAMBER.COM.

USCC 55744

PANDEMIC PREPAREDNESS

Most experts agree that there is a growing and significant threat of a global pandemic, but that there is no way to predict either exactly when it might occur or the severity of the impact. As with any of the risks that we face as a country—including natural disasters and the ongoing possibility of another terrorist attack—it is imperative that all segments of society be prepared for such a threat. The U.S. Chamber is therefore encouraging preparedness for an influenza pandemic within the business community.

In addition to the threat that a pandemic could pose to human health worldwide, few industries will be insulated from the economic effects resulting from absenteeism in the workplace or from the downstream effects stemming from supply-chain and travel disruption.

The Chamber is undertaking a number of activities to help our members plan and prepare for a pandemic. We have been holding Business Pandemic Preparedness Roundtables for members with state chambers, business leaders, and officials from the U.S. Department of Homeland Security and Centers for Disease Control and Prevention. At the roundtables, officials provide information to members and discuss pandemic planning. The Chamber has also brought together the public and private sectors for a Pandemic Preparedness Forum, cohosted with the National Chamber Foundation to discuss implementation of the President's National Strategy for Pandemic Influenza.

CHAMBER CONTACT: HOMELAND SECURITY AT 202-463-3100 OR ANN BEAUCHESNE AT ABEAUCHESNE@USCHAMBER.COM.

TRANSPORTATION INFRASTRUCTURE AND INDUSTRY ISSUES

America's transportation system, once a marvel of the modern world, is in crisis: Roads, rails, air-traffic control, transit systems, intermodal facilities, inland waterways, and ports are being stretched beyond capacity and falling into disrepair. Economic growth will soon be stunted by air, water and surface transportation systems that are at or near capacity in critical locations. Our productivity and competitive advantage are at risk, and if we do not start addressing this exponentially increasing problem, it will become insurmountable.

The 110th Congress has the opportunity—and responsibility—to address infrastructure capacity through three major transportation funding measures:

- VISION-100 reauthorization—The top item on the U.S. Chamber's transportation agenda for the 110th Congress is timely reauthorization of Federal Aviation Administration funding. The Chamber's agenda includes reducing the burden of unjustified taxes, fees, and regulations on our airlines, dramatically expanding our air-traffic control and airport capacity to handle much greater volumes of traffic safely and efficiently, and promoting policies that help airlines and the aviation industry compete globally.

- Ensuring that funding commitments are kept—The Chamber will ensure that the funding commitments made in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) are kept in the appropriations process.

Congress must invest all of the available resources and honor the funding guarantees for the highway, public transportation and safety programs that have been in place since 1998.

- Water Resources Development Act (WRDA) reauthorization—The Chamber will call upon Congress to pass the long-overdue WRDA to provide the coordinated federal agenda this nation needs to better protect our economy and citizens against severe weather and flooding and to facilitate commerce at our waterways and ports.

- In addition to its legislative agenda, the Chamber will do the following:

- Engage the business community in articulating the need to secure critical capacity increases in the near term to provide speed, reliability, and cost-effective service to businesses and citizens.

- Redefine the infrastructure debate to focus on the capacity crisis and mobilize the business community to support increased investment in transportation infrastructure.

- Build national grassroots networks to garner support for transportation infrastructure and industry issues.

- Educate the media, lawmakers and opinion leaders about the national economic contributions made by transportation industries and derived from transportation infrastructure investment.

- Convene a surface transportation policy task force to prepare for the surface transportation authorization process that must create a strong federal vision, policy and funding approach for the nation's roads, rails, intermodal facilities and public transportation systems.

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TRANSPORTATION SECURITY

In the post-9/11 environment, securing the movement of people and goods across all modes continues to be a national priority. The U.S. Chamber supports reasonable, risk-based measures to strengthen the security and resiliency of our nation's transportation networks. The Chamber recognizes that the free flow of commerce and unimpeded mobility are central to the nation's economic security.

The Chamber will continue to work with Congress and the U.S. Department of Homeland Security to ensure that transportation security policies carefully balance the twin goals of security and open trade. The Chamber will continue to oppose costly and burdensome regulations and unrealistic mandates. In particular, we will continue to oppose requirements to inspect 100% of cargo. Such a requirement would severely disrupt supply chains and trade flows. Instead, we support a risk-management approach utilizing sophisticated analysis tools to identify high-risk cargo and passengers.

Recognizing that homeland security is a national priority, we will continue to oppose efforts to shift the costs by imposing excessive new fees on businesses and travelers. We will also work to ensure that credentialing programs for travelers and workers do not place undue burdens on passengers and workers.

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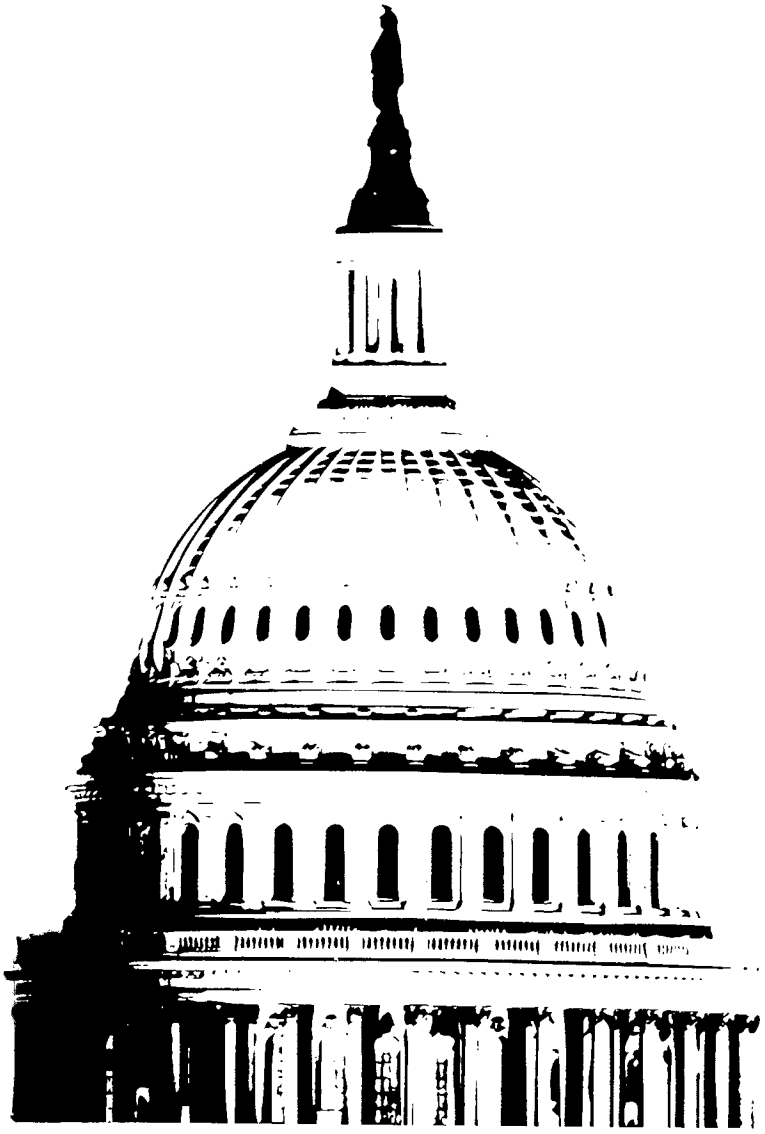

TAX REDUCTION AND TAX REFORM

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:RNATIVE MINIMUM TAX

ıally designed to ensure that all taxpayers pay at least
mum amount of taxes, the Alternative Minimum Tax
) unfairly penalizes businesses that invest heavily in
machinery, equipment, and other assets.

MT significantly increases the cost of capital and dis-
;es investment in productivity-enhancing assets by negat-
ıy of the capital formation incentives provided under
gular" tax system, most notably accelerated depreciation.
se matters worse, many capital-intensive businesses have
erpetually trapped in the AMT system, unable to use
ıspended AMT credits.

rmore, the AMT is extremely complex and burdensome.
usinesses not subject to the AMT must go through the
tations to determine whether they are liable for the tax.
the Taxpayer Relief Act of 1997 (Public Law 105-34)
:ed "small business corporations" from the AMT, larger
ations and many individuals may not be exempt.
ıally, while recent legislation offered modest increases
:xemption amounts for individuals, more and more
-income individuals are left vulnerable to the AMT.

ıing the AMT would spur capital investment within the
s community, thereby creating more jobs. The U.S.
er supports measures to simplify and reduce the scope
orporate and individual AMT while ultimately working
repeal of both.

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BUSH TAX CUTS

The landmark Economic Growth and Tax Relief Act of 2001 (Public Law 107-16)—also known as the $1.35 trillion "Bush tax cut" package—included significant individual income-tax rate reductions, lower taxes for married couples, increased child credits, increased retirement plan limits and portability, phase-down and repeal of the estate tax, and reduction of the gift tax. Because of Senate budget rules, however, the act's provisions expire at the end of 2010, and the tax law reverts to pre-enactment levels of taxation.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) —the second major Bush tax cut package—included acceleration of the income-tax rate reductions, temporary expansion of the child credit, personal AMT exemptions, Section 179 small business asset expensing, and provided temporary reductions in taxes on dividends and capital gains.

A leading priority for the U.S. Chamber during the 110th Congress is to work to preserve provisions of the Bush tax cuts, improve their stimulative and growth effects, and make them permanent.

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GAINS AND DIVIDEND TAX AND REDUCTION

)mists believe that reducing or eliminating the tax
n the sale of capital assets and on dividends paid
ate earnings will stimulate economic growth by
apital formation and mobility.

xpayer Relief Act (Public Law 105-34) reduced
n tax rate for long-term capital gains from 28%
10% for those in the 15% income tax bracket)
ing the holding period for such gains from twelve
ghteen months. The 1998 Internal Revenue
n bill later reduced this holding period to twelve

also allowed married couples to exclude up
f capital gains on the sale of their principal
ry two years. Single filers can exclude up to
ich capital gains.

Growth Tax Relief Reconciliation Act of 2003
)8-27) reduced the maximum individual
es on capital gains and dividend income to
hrough 2008, and the Tax Increase Prevention
ition Act of 2006 (Public Law 109-222)
rovisions through 2010.

iber supports further reform in the capital-
er lowering the capital-gains and dividend
s, and making these cuts permanent, will spur

investment activity, create jobs, and expand the overall economy, benefiting individuals of all income levels.

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The U.S. Congress and the EPA are studying the issue. Meanwhile, California, Maine, Maryland, and Washington have passed e-waste laws, and several other states are debating the topic. The electronics industry is concerned that without a uniform national approach to e-waste, manufacturers and retailers will be forced to comply with 50 different state e-waste programs. Many companies now agree that these goods should be recycled, but the industry has not yet formulated a unified policy position. The main disagreement centers on how recycling efforts should be funded.

The U.S. Chamber will do the following:

- Create a working group to develop an industry consensus and Chamber policy on e-waste.
- Draft legislative and regulatory language that creates a uniform national approach to the management of disposed e-waste and urge adoption of that language by Congress and the EPA.

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scrupulously honest, and yet a wellspring of innovation, invention, and growth. In addition, it will continue to work on a variety of topics, including preserving the future of the auditing profession.

2. Push back on overreaching regulation—and unfair and unpredictable enforcement. This effort includes opposing the mutual fund governance rule, the Securities and Exchange Commission's enforcement overreach, the U.S. Justice Department guidelines regarding the attorney-client privilege, and bringing cost-benefit balance back to Sarbanes-Oxley.

3. Prevent other parties—such as unions, public pension funds, and the trial bar—from using and abusing our capital market system to further their own interests. This effort includes opposing shareholder access to proxy materials, mandatory majority vote provisions, exposing the agenda and conflicts of interest of Institution Shareholder Services, and promoting the Institute of Legal Reform initiative to address the growing wave of securities-based class-action litigation.

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CURRENT FEDERAL TAX SYSTEM REPLACEMENT AND REFORM

Many Americans believe the current income-tax system is overly complex, is extremely burdensome, excessively taxes personal and business income, favors special interest groups, and fails to promote savings and investment. Several alternative tax system proposals have been introduced in Congress, including those that would implement a flat tax, savings-exempt income tax, national retail sales tax, and value-added tax. These and other proposals will likely be analyzed and debated further during the 110th Congress, especially in light of interest generated by the proceedings and report of the President's Advisory Panel on Federal Tax Reform during the 109th Congress.

Although currently favoring no particular alternative tax system proposal, the U.S. Chamber will continue to study the issue and urge Congress to end the current tax system's bias against saving and investment and to reduce the system's administrative burdens and enormous compliance costs. A simpler, fairer, and less burdensome tax system that rewards saving and investment is critical to extending the nation's productivity increases, which, in turn, have rewarded us with sustained economic expansion, wage growth, and a higher standard of living. The Chamber will continue to monitor tax-reform efforts by the Bush administration and Congress to ensure that the concerns of Chamber members are accounted for.

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ESTATE-TAX REPEAL

Permanent repeal of the estate tax ("death tax") is a priority. The current estate-tax system can deplete the estates of those who have saved their entire lives, force family businesses to liquidate and lay off workers, and motivate people to make financial decisions for estate-tax purposes rather than for business or investment reasons.

Family-owned businesses should not be punished because they are successful or because their owners pass away. Fundamentally, the United States is the land of opportunity, encouraging free enterprise and rewarding entrepreneurs. The estate and gift taxes run contrary to this basic philosophy.

The Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) phases down the estate tax through 2009 and then fully repeals it in 2010. Because of Senate budget rules, however, the act expires at the end of 2010, and the estate tax comes back into full bloom starting in 2011.

A priority for the U.S. Chamber during the 110th Congress is to make permanent the Bush tax cuts, especially the provisions eliminating the estate tax.

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INTERNATIONAL TAX LAW SIMPLIFICATION

The jobs of many U.S. workers residing both inside and outside the United States are tied to the exports and foreign investments of U.S. businesses. Job growth is becoming increasingly dependent on expanded, competitive, and strong foreign trade. Our tax code restrains U.S. businesses from competing effectively abroad, in turn restraining economic growth at home.

The tax rules that govern exports and the foreign investment and operations of U.S.-based multinational corporations are in need of revision. Existing laws represent a patchwork of extremely complex rules without an overall policy or purpose and impose barriers on U.S. companies seeking to compete in world markets. For U.S. businesses to be competitive in the expanding global market, U.S. foreign tax rules must be simplified and made job- and business-friendly.

The U.S. Chamber has been actively fighting legislative attacks on U.S. multinational corporations that "invert"—reincorporate their foreign operations in foreign countries—in an attempt to create a level playing field with foreign multinational corporations. These attacks typically come either in the form of tax legislation to penalize or inhibit the use of inversion or as nontax legislation to exclude inverted companies or related entities from being able to enter into or participate in federal contracts. The Chamber instead advocates a long-overdue legislative overhaul of the U.S. tax code's antiquated

and Byzantine foreign tax provisions that prevent U.S. corporations from competing fairly with their foreign counterparts.

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PROCUREMENT AND GOVERNMENT CONTRACTING

Many reform initiatives in the past few decades have affected how the federal government contracts for goods and services with the private sector. Through these initiatives, agencies have moved toward eliminating government-unique specifications to the maximum extent practicable to obtain products and services in a more timely, efficient, and cost-effective manner. The recent reforms have allowed the private sector to provide commercial products and services directly to the government at a significant reduction in cost. They have also alleviated some of the barriers to entry into the market for companies providing noncommercial products and services.

The reduction of government-unique requirements and the minimization of other impediments to diverse private sector involvement allow more companies to enter the federal market, benefiting the agencies by enlarging the seller base and increasing competition. While much progress has been made, the acquisition process is not perfect and at times invites stories of abuse and mismanagement. Though an aberration and not the norm, these stories put a stain on the entire government procurement process and many times elicit legislative actions that are harmful to the overall acquisition process. The U.S. Chamber will continue to work to educate staff so that legislation that harms the procurement process for companies is not hastily enacted.

The Chamber has a long-standing policy that the government should not produce goods and services for itself or others if acceptable privately owned and operated services are or can be made available for such purposes. The government saves billions

of dollars when it partners with and invests in private sector companies. This, in turn, helps sustain our nation's competitive edge in industries such as defense, information technology, and management. Despite these benefits, the government continues to perform countless commercial services, even though business has repeatedly proved that it can provide these services at a lower price, with higher quality, and with a faster delivery schedule.

Government must continue to streamline the acquisition process, ensure a fair and open procurement system, and rely more on the private sector for the goods and services it needs. Federal procurement requirements often create regulatory inflexibility and impose costly administrative burdens on industry with the effect of increased costs to the taxpayers. The federal government must undertake more reforms that reduce government restrictions, eliminate government monopolies, and promote a level playing field for all interested companies.

The Chamber continues to work to increase business opportunities and profitability for the private sector in the federal market by advocating a fair and efficient contracting process and limits on unfair government competition through comprehensive reform of Federal Prison Industries, enhancing the competitive sourcing process, and other areas of unfair competition to the private sector. The Chamber will continue to work with Congress and the executive branch to improve the acquisition process and monitor the implementation of the many changes made in the last few years.

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REPEAL OF THE 3% WITHHOLDING REQUIREMENT

Section 511 of the Tax Reconciliation Act of 2005 (Public Law 109-222) that passed in May 2006 mandated that federal, state, and local governments withhold 3% from payments for goods and services. This unprecedented withholding mandate will affect all government contracts as well as other payments, such as Medicare and grants, starting in 2011. This requirement will force some companies to alter their business models and pricing schemes when dealing with the government. Doctors and hospitals, while already under-reimbursed by Medicare, will have their situation further exacerbated by the withholding requirement.

This far-reaching new requirement was inserted as a last-minute revenue raiser into the bill without a thorough vetting of its true ramifications. In an attempt to find tax delinquents, honest taxpaying businesses are essentially forced to provide the federal government with an interest-free loan. The 3% withholding requirement significantly affects companies' cash flows. Companies will lose vital funds needed to operate day-to-day activities and will be forced to pass along the added costs to government customers.

An estimated $6 billion of the estimated $7 billion in "increased revenue" is due to an accounting gimmick through the acceleration of tax receipts. The provision generates only $215 million in new revenue in each of the following years. The $215 million per year of increased revenue due to increased tax compliance will likely be far less than the additional costs to administer the program and the increases in bid rates to governments due to the passed-on costs.

The U.S. Chamber is working with Congress to repeal the provision and is working to prevent any advancement in the effective date or increase in the withholding percentage.

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RESEARCH AND EXPERIMENTATION TAX CREDIT

The Research and Experimentation (R&E) Tax Credit encourages technology-based companies to invest additional resources in the research, development, and experimentation of various products and services, which promote both job creation and economic expansion. The credit has expired and been extended many times since its inception and was extended retroactively to January 1, 2006, and through December 31, 2007, by the Tax Relief and Health Care Act of 2006 (Public Law 109-432). This law also expanded and enhanced the R&E credit, increasing the credit computed under the alternative incremental rates and introducing a new, simplified alternative credit.

The U.S. Chamber believes that the R&E Tax Credit should be permanently extended and expanded. It provides an extra incentive for companies to invest more in research and experimentation on their goods and services.

Permanently extending the R&E Tax Credit, rather than temporarily renewing it during the political bargaining process, would provide businesses with continuity and certainty. A permanent credit would allow businesses to make long-range planning decisions, a key in many fields where years of research are necessary before products can be brought to market.

The Chamber will continue to support efforts to make the enhanced R&E Tax Credit a permanent part of the tax law.

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REVENUE OFFSETS

In recent years, Congress has increasingly attempted to offset the cost of tax-reform initiatives with provisions that raise money. These provisions are referred to as revenue offsets, also commonly known as "revenue raisers" or "pay-fors." Revenue offsets, however, often represent tax increases on the business community, dampening the salutary effects of reform provisions.

Within the anticipated constraints of working with the 110th Congress, it is expected that the U.S. Chamber will be spending much time attempting to prevent back-door taxes on businesses through imposition of revenue offsets made more likely by expected re-imposition of PAYGO (Pay As You Go) rules. Anticipated issues for revenue offsets include but are not limited to: codification of the economic substance doctrine; restriction on or repeal of the LIFO (Last-In, First-Out) inventory method; imposition of a windfall-profits tax on oil; increase in top marginal income tax rates; and inclusion of entire S corporation net earnings in shareholders' self-employment tax bases.

The Chamber expects that the 110th Congress will increasingly insert these measures in its bills. The Chamber will continue to oppose ill-conceived, harmful provisions and remain ever-vigilant in discovering their presence in legislation and working to remove or defeat them. The Chamber will work to block enactment of revenue-raising provisions that impose new or increased taxes on businesses and to alleviate or repeal such

provisions through legislative or administrative means if enacted.

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REVENUE SCORING OF TAX PROPOSALS

When the government considers raising or cutting taxes, it produces official "scores" that estimate the resulting changes to federal revenues and the distribution of the tax burden. Those estimates are very important in evaluating the desirability of proposed tax changes. Therefore, it is vital that policymakers be provided with the most accurate and complete assessment of the likely effects of tax proposals.

Unfortunately, under the current scoring system, policymakers are not provided with the best information. Estimated revenue effects of proposed tax changes do not take into account most of their economic effects. In addition, the tax-policy process, which is facilitated by the analyses conducted by the Joint Committee on Taxation (JCT) and the U.S. Treasury's Office of Tax Analysis (OTA), has been slow to change and closed to public scrutiny and peer review.

The U.S. Chamber supports reforms to increase the accuracy of tax revenue and distribution estimates, the transparency of the process, and the restructuring of federal tax-policy organizations to increase accountability. As part of this improvement, the Chamber suggests that the production of "dynamic" revenue estimates by the JCT and OTA would be useful in that they would incorporate the "real-world" economic effects of suggested tax changes. Furthermore, the Chamber maintains that "distributional" analyses, showing the effects of tax changes by income groups, should be improved by incorporating longer horizons and presenting results by both consumption and income levels.

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S CORPORATION RULES REFORM

S corporations operate in every business sector in every state. More than 55% of all corporations file as S corporations, and the vast majority of them are small businesses responsible for most new jobs created each year.

Despite the various S corporation tax-relief provisions enacted in 1996 and in previous years, other reforms are still needed.

The tax laws that currently govern these entities remain too restrictive, complex, and burdensome. The current rules—adopted in 1958 when S corporations were created, and subsequently amended—are out of sync with modern economic realities and continue to impede the growth of small businesses and burden them with unnecessary administrative complexity.

The U.S. Chamber successfully fought for enactment of several S corporation reform and simplification provisions in the American Jobs Creation Act of 2004 (Public Law 108-357). The Chamber will continue to support efforts to further improve and simplify S corporation tax rules.

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SMALL BUSINESS EQUIPMENT EXPENSING

For 2002, businesses could expense up to $24,000 of equipment purchases. Through the efforts of the U.S. Chamber, this allowance was increased to $100,000 for tax years 2003 to 2005 by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27), and was later extended through 2007 by the American Jobs Creation Act of 2004 (Public Law 108-357) and, again, through 2009 by the Tax Increase Prevention and Reconciliation Act of 2006 (Public Law 109-222). Businesses investing more than the annual expensing allowance must recover the cost of their expenditures over several years through the depreciation system. Inflation, however, erodes the present value of future depreciation deductions.

The Chamber supports the full expensing of business equipment, or, at the very least, a permanent increase in the section 179 equipment expensing allowance. Such measures would spur additional investment in business assets and lead to increased productivity and more jobs.

While the Chamber supports initiatives to make permanent the increased amount eligible for immediate Section 179 expensing, it will continue to strongly support efforts to provide full expensing of business equipment.

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SMALL BUSINESS PROGRAMS AND ACCESS TO CAPITAL

Small business makes a distinctive and creative contribution to the American economy. For most Americans seeking economic independence, small business ownership offers the greatest opportunity for financial empowerment. Small businesses produce a major share of business innovation. Their numbers make them the largest source of private employment and the most tangible local representation of the private-enterprise system in America today. One barrier to the entry, sustainability, and growth of small-business ownership is access to capital, especially long-term debt financing. The U.S. Chamber recognizes that ensuring the availability of financing to foster the growth and expansion of small businesses is in the best interest of the American economy.

Additionally, effective government programs that encourage and promote small-business innovation, international trade, business startup and growth, and provide assistance with regulatory compliance leverage government resources to provide an infrastructure for entrepreneurs to take advantage of the free-market environment in America. When small-business owners are able to better navigate through the maze of government regulations, overcome the obstacles of international trade, and have access to counseling that will provide them with best practices in running a business, then jobs will be created. As a result, the American economy will benefit.

The U.S. Chamber will work with lawmakers to assure that the creation, funding, and reauthorization of government small-

business assistance and access to capital programs are effective, **widely** available and uninterrupted.

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SOCIAL SECURITY SOLVENCY

The Social Security system is under considerable strain from shifting demographic patterns in the United States. Intermediate estimates of the trustees of the Social Security Trust Fund predict that Social Security payroll-tax revenues will fall below outlays sometime around 2017, and the trust funds, which are generating a surplus now, will be exhausted by 2040. At that point, there will be a huge gap between outlays and revenues because of a booming retirement population and an employee base that is growing much more slowly. To contend with these demographics, either benefit levels must be cut, payroll taxes raised, or additional funds transferred from the general Treasury receipts. To avoid these draconian stopgap measures, the system should be substantially revamped. The earlier these challenges are faced, the less drastic and divisive the solutions will be.

The U.S. Chamber is committed to making sure that Congress and the administration take the necessary steps to avert this fiscal crisis and to maintain the viability of our Social Security system. The Chamber believes that Social Security reform should avoid unnecessary tax increases or benefit cuts and should include a private savings account option that can use individual, private market investments.

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THE TAX GAP

The "tax gap" is the difference between what taxpayers owe the federal government and what they actually pay. The U.S. Chamber firmly believes that all taxpayers should pay their tax liabilities on a timely basis. When taxpayers do not pay their fair share of taxes to the federal government, compliant business taxpayers are put at a competitive disadvantage and all taxpayers must make up the difference by an increased tax burden or by increasing the national debt.

Notwithstanding this long-held principle, efforts to collect from noncompliant taxpayers should take place with minimal cost and burden to those who are compliant. Thus, care must be taken to craft solutions that are feasible, targeted, and nonintrusive—especially to small businesses.

For this reason, the Chamber was a founding member of the Coalition for Fairness in Tax Compliance (CFTC), formed in response to efforts by lawmakers to address the tax gap.

It is the mission of the CFTC to fight for the rights of tax compliant small-business owners by doing the following:

- Supporting the accurate use and collection of information on the source, size, and scope of the problem of tax noncompliance that forms the foundation for policy decisions.
- Supporting targeted, sensible regulatory and legislative measures that will reduce tax noncompliance without generating undue burdens on the general small-business community.

- Supporting efforts to encourage tax compliance by simplifying sections of the tax code that are confusing and complicated.

- Opposing regulatory and legislative strategies proposed by lawmakers who, in an attempt to increase tax compliance, would impose excessive and obtrusive burdens on honest small-business owners.

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WORKER CLASSIFICATION RULES

The reclassification by the Internal Revenue Service (IRS) of workers from independent contractors to employees can be devastating to small-business owners. Such reclassification often subjects a business to back federal and state taxes, penalties, and interest, as well as administrative penalties. To satisfy their assessments, business owners must dip into their cash reserves, lay off workers, sell assets, or, in the worst-case scenario, liquidate or declare bankruptcy. Businesses that choose to dispute IRS reclassification may have to deplete their resources to defend their positions.

Existing worker classification rules are too complicated, confusing, and subjective. Clearer classification guidelines—either statutory or regulatory—should be carefully written and include improved resolution of classification disputes and better training for IRS examiners. In recent Congresses, objective criteria were developed to determine who is not an employee. These criteria are significantly clearer and easier to apply than the existing subjective twenty-factor test and section 530 safe-harbor rules.

While supporting the promulgation of clear and simple classification criteria, the U.S. Chamber will continue to oppose any poorly conceived efforts that may harm the thousands of businesses and workers around the country that have relied on the current law for more than two decades.

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WORK OPPORTUNITY AND WELFARE-TO-WORK TAX CREDITS

The Working Families Tax Relief Act of 2004 (Public Law 108-311) extended the Work Opportunity Tax Credit and the Welfare-to-Work Tax Credit through December 31, 2005. The Tax Relief and Health Care Act of 2006 (Public Law 109-432) extended these credits without modification through 2006 and, for 2007, expanded eligibility requirements for the Work Opportunity Tax Credit and combined it with the Welfare-to-Work Tax Credit. These tax credits encourage employers to hire individuals from several targeted groups. Eligible workers under the Work Opportunity Tax Credit include economically disadvantaged youths, Vietnam veterans, and welfare recipients. Eligible workers under the Welfare-to-Work Tax Credit include long-term recipients of family assistance. Without these tax credits, employers might have less incentive to hire individuals from the targeted groups.

While the U.S. Chamber believes that extension of the credits is a step in the right direction, the Chamber also believes that both credits should be extended permanently. They provide employers with an added incentive to hire disadvantaged individuals, in turn benefiting the local and national economies Permanent extensions would provide continuity and certainty to the income-tax system and maximize the beneficial aspects of the credit. The Chamber will continue to support efforts to permanently extend both the combined Work Opportunity Tax Credit and Welfare-to-Work Tax Credit.

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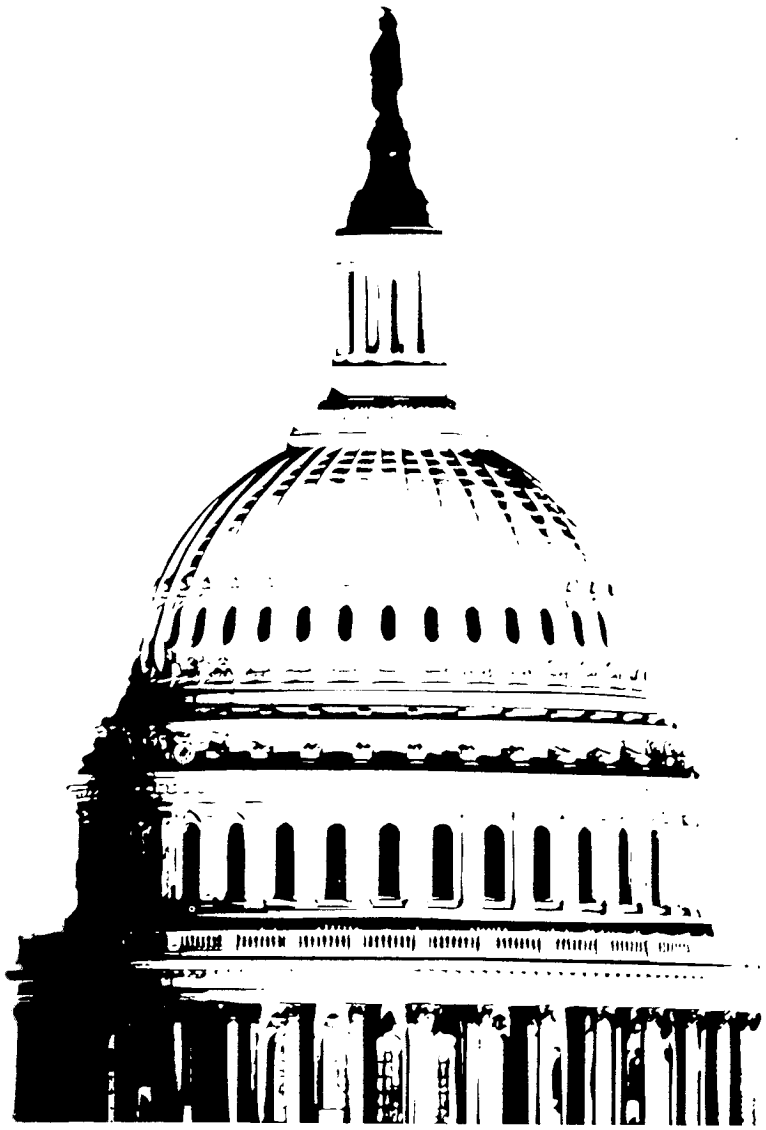

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EXHIBIT 20

AUDITING: A PROFESSION AT RISK

U.S. Chamber of Commerce

January 2006

AUDITING: A PROFESSION AT RISK

U.S. Chamber of Commerce

January 2006

USCC 55279

AUDITING: A PROFESSION AT RISK

Auditing plays a unique role in our economy. By law, all companies whose securities are available to the general public through U.S. exchanges are required to have their financial statements audited by an independent registered public accounting firm. The goal has historically been to provide confidence to investors and bring standardization and discipline to corporate accounting, thereby increasing the liquidity and economic potential of U.S. capital markets.

While there are legitimate debates about the meaning of financial statement audits, there are certain facts about the auditing profession that are hard to deny:

- Not only is auditing required by law, but recent regulations and legislation (most notably the Sarbanes-Oxley Act of 2002) greatly increased its role in public companies. The political determination has been made that auditing is central to public confidence in our capital markets.

- The pressure for auditors to "do more" when conducting audits means that the auditor-client relationship is becoming more involved and continuous, with much more frequent interactions, rather than simply holding periodic

discussions geared around financial statement reporting cycles.

- The auditing profession faces a number of significant legal challenges. It is subject to new regulation under the auspices of the Public Company Accounting Oversight Board (PCAOB). More important, the profession finds itself the target of a difficult litigation and regulatory enforcement environment, where business losses by a client can result in lawsuits, and a single indictment — even without a conviction — can result in the destruction of thousands of jobs.

- Because of the Sarbanes-Oxley Act and other requirements, auditing expenses have increased tremendously. At the same time, many clients believe that they are receiving less overall advice and support from their auditors. Audit firms feel that they are caught in a no-win situation between the demands of regulators, law enforcement, the plaintiffs' bar, and their clients.

- The process of developing accounting principles remains in flux, even as business transactions become ever more complex. In addition to the respective roles of FASB, the PCAOB, and the SEC, there are many emerging issues related to international harmonization and the IASB.

- There remain significant misunderstandings about the meaning and nature of accrual accounting systems and the level of precision inherent in such systems. Changes of 1 or 2 cents per share in a company's earnings can have a great market impact — and create significant litigation risk — even if such changes indicate nothing about the health of a company's underlying business.

- The profession — through voluntary mergers as well as through the elimination of Andersen — is severely contracted, with only four major firms serving a large majority of the listed and actively traded public companies in the United States. While four appears to be a sustainable number, any further contraction in this industry would present a major challenge to the viability of the profession, with potential for a negative effect on public confidence in our markets. William McDonough, former chair of the PCAOB, said, "None of us [regulators] has a clue what to do if one of the Big Four failed." He also said that if one of the Big Four were to collapse, the best accountants could choose to quit the profession[1].

There continue to be debates about the role that the auditing profession itself has played in bringing about some of these

[1] *Financial Times*, September 28, 2005, p. 26.

circumstances, and what it can do on its own to address the current challenges. Nevertheless, the simple facts are that (i) confidence and stability are critical to the success of capital markets, and (ii) auditing helps bring these attributes to our markets. Instead of risking a crisis, it is important to act now to try to bring some stability back to the auditing profession. At the same time, action must be taken to ensure that the needs of companies are met and that they have access to high-quality, reasonably priced auditing services.

ACTION PLAN

The U.S. Chamber of Commerce is committed to supporting policies that enhance the value of audits and ensure the long-term viability of the auditing profession. In that regard, we propose the following three-part action plan:

- Help the profession become insurable
- Clarify PCAOB standards
- Support expansion of and competition among the Big Four firms

This plan will require a broad-based effort, involving coordinated support among policymakers, Wall Street, the auditing profession, and the broader business community. The U.S. Chamber stands

ready and willing to be at the center of these efforts.

HELP THE PROFESSION BECOME INSURABLE

Auditing firms are required by state professional licensing laws and ethical rules to operate as partnerships that do not seek outside equity capital. As voluntary organizations funded by individual partners, auditing firms cannot be successful if there are concerns about their stability and survival. Clients and valuable partners can — and will — leave if these concerns arise. This is even more true at the international level, where local affiliates can move whole national practices at the first sign of trouble. Andersen is a perfect example of the damage that can be done to a large, international confederation of partnerships as a result of the actions of a few bad employees and one ill-considered indictment.

While it would be neither possible nor desirable to limit all risks to the stability of auditing firms, there are particular concerns about growing legal threats. Overlitigation and unfair enforcement threaten many parts of our economy — and the Chamber has been at the forefront of efforts to bring rationality back to our legal system. But professional partnerships that can dissipate overnight are particularly vulnerable. One indictment or excessive judgment that

jolts the confidence of clients or partners has the potential to immediately destroy an audit firm, even if that indictment or judgment is later overturned or reduced on appeal.

Furthermore, these legal risks are so uncertain — and their implications are so dire — that the profession is effectively uninsurable. Without this standard tool for business planning and protection, the profession sits on a knife's edge.

This is not only bad for firms and their clients, but it also makes the auditing profession increasingly unattractive to high-quality personnel. Qualified auditors face ever-growing incentives to exercise their professional options and may opt to leave the profession altogether.

It is vital that we better define the responsibilities and appropriate potential legal risks of the profession and establish the conditions that would allow for commercial insurability and, therefore, stability. Part of the answer may involve tort reform. The U.S. Chamber Institute for Legal Reform is the nation's premier advocate for bringing rationality back to our legal system, and we stand ready to support responsible options for bringing tort relief to the auditing profession. However, even short of comprehensive tort reform, we believe that the following four initiatives could have a substantially

positive effect on the environment surrounding auditing:

(i) **Better define an auditor's procedures for fraud detection and the limits of an auditor's responsibility**
Auditors are neither detectives nor arms of law enforcement. They do not and should not have the ability to issue subpoenas, establish wiretaps, or conduct lie detector tests. They are not trained in criminal law and cannot reasonably monitor the personal behavior of executives. Nonetheless, while auditors cannot eliminate the risk of fraud, they are inevitably blamed when it occurs — even when it is the auditor who ultimately uncovers the fraud. This is a standard that no law enforcement agency could meet. The increasing burdens on auditors for fraud detection result in increasing audit cost burdens on all clients.

Auditors should neither be expected to detect or prevent all cleverly designed collusive frauds, nor should they necessarily be liable when such frauds occur. The auditing profession accepts and should continue to accept some responsibility for detecting fraud, but the limitations on this responsibility should be clearly defined. A clean audit opinion is not a guarantee that no fraud

has occurred — only evidence that reasonable and thorough efforts have been made to detect fraud. In that respect, we recommend that the PCAOB promulgate a safe harbor standard for fraud detection, which clearly defines the nature and extent of procedures that an auditing firm must employ to detect fraud.

A safe harbor would provide clarity to the investing public about the meaning of an audit opinion, and it would allow firms to determine when they have satisfied their responsibilities. Such a standard would also protect auditing firms from legal liability when the PCAOB-prescribed procedures have been reasonably performed.

Without such a standard, auditing firms are effectively asked to be criminal investigators and insurers of the character of corporate managers. This is not only unfair; it is also a strong disincentive for firms to accept new and entrepreneurial clients with unproven management. The reluctance to accept such clients places a significant burden on the many innovative small companies that are led by good, but unknown, managers. This ultimately undermines the future growth and development of the U.S. economy.

(ii) **Create an ADR System for Disputes About Audits**

The U.S. Chamber supports alternative dispute resolution (ADR), particularly for industries where ADR would clearly be more efficient and fairer than normal litigation procedures.

Auditing is an example of a highly technical profession where the standards require the application of significant professional judgment. It is simply not reasonable to expect juries and nonexpert judges to properly evaluate arcane accounting judgments and auditing methodologies.

There have been proposals for specialized "accounting courts" for almost 50 years. Whether through this or another proven ADR mechanism (such as mandatory expert arbitration), the Chamber calls upon the auditing profession, the PCAOB, and Congress to establish a civil structure where disputes about accounting issues are considered and decided by experts with a deep understanding of the issues. There are areas where ADR may not make proceedings more efficient or fairer — large and complex class action suits, for example — but certainly not all audit disputes should end up in the courts.

(iii) **Permit Parties to Agree to ADR and to Reasonable Limits on Litigation**
There have been calls for the SEC and banking regulators to limit the ability of auditing firms and their clients to agree to ADR and to limitations on punitive damages, among other things, as part of their engagement negotiations. This is an attempt to deprive private parties of standard tools that are used in other industries to manage litigation risk and is clearly misplaced regulatory overreach. More litigation risk won't make for better audits; it will simply make for more defensive audits.

(iv) **Regulate Threats of Indictment Against Firms**
An auditing firm lives or dies by its reputation, and a criminal indictment can immediately destroy a reputation, without regard to ultimate criminal culpability. The inappropriate indictment of Andersen led directly to severe job dislocations for 28,000 people in the United States — and many tens of thousands overseas. This was wrong, unfair, and bad for our economy.

If crimes are committed, enforcement authorities should indict and prosecute individuals involved in those crimes. This would include managers with knowledge of the criminal activity or with responsibility for the operations

in which the activity took place. Other individuals with an interest in the firm — who had no knowledge of the activity or any ability to affect it — should simply not be punished.

Unfortunately, enforcement authorities realize that indicting and prosecuting individuals is hard, while threatening to slap an indictment on a professional partnership is very easy. Audit firms cannot afford to be indicted, and they have very limited means to defend themselves if accused of a crime. The mere threat of an indictment is a prosecutorial club that can produce guilty pleas and monetary settlements — without the need to prove any facts in a court of law. (This is not only a problem for auditing firms but for a wide range of enterprises in financial services and other industries.)

We call upon Congress to rein in this misused weapon of the Department of Justice and other regulatory authorities and to establish clear rules under which enterprises may be criminally indicted, according to clear processes for having such indictments carefully evaluated. The goal should be to acknowledge the disparate impact indictments can have on enterprises and the corresponding unchecked prosecutorial power.

> Enterprises need a chance to be heard before indictments are handed down — including an opportunity to object to the appropriateness of a threatened indictment in light of the respective roles of individuals versus the institution.

CLARIFY PCAOB STANDARDS

Auditing Standard #2, the primary implementing standard for Section 404 of Sarbanes-Oxley, is a large, expansive, principles-based document. While it provides a great deal of room for auditors to exercise judgment and to determine the meaning of words like "significant" and "relevant," it doesn't provide much guidance as to when "enough is enough" with respect to the auditing of internal controls. Auditors must be allowed to exercise professional judgment, but the lack of specific guidance subjects them to substantial second guessing — by the plaintiffs' bar, the inspection staff of the PCAOB, and others — that their audits did not go far enough.

Senior PCAOB officials have stated that they can't identify overauditing. If the primary regulator doesn't know the outer limits of the standards, then how can audit firms or their clients be expected to? The PCAOB's own inspection process — without a standard for determining excessive auditing — encourages auditors,

given their structure and liability risks, to continually exceed whatever anyone may think is the standard for control testing and review.

It is incumbent upon the PCAOB to step in and define "enough," at least in certain key areas (such as IT systems), and let everyone know the outer boundaries of what is expected under Section 404. Further, even where "enough" cannot be reasonably defined, the inspection process should be used as a means to educate and reveal reasonable limits, rather than to second guess professional judgments.

Overauditing, much like liability-inspired "defensive medicine," exists and has been the cause of serious deterioration in many auditor-client relationships. The PCAOB has played a large role in creating the circumstances for overauditing. It has the responsibility to clarify Auditing Standard #2, provide reliable safe harbors, and bring the Section 404 cost-benefit equation back into balance by allowing auditors and their clients some measure of predictability and freedom from second guessing.

The business community is primarily interested in knowing that someone is ultimately responsible for ensuring that the auditor-client relationship is healthy *and* productive. As the regulator for this profession, it is incumbent upon the PCAOB to step up and accept this responsibility.

SUPPORT EXPANSION AND COMPETITION AMONG TOP-TIER FIRMS

In the end, competition is the best way to ensure good customer service. Given the small number of top-tier firms, many public companies feel that they have a limited ability to negotiate with auditors about fees or terms of service. In fact, a common concern among smaller public companies is being dropped by their long-standing auditing firms. These companies believe that they have practically no negotiating power.

Many companies also hire other members of the Big Four for advisory and other nonaudit services that preclude these firms from bidding on audit work. Some large companies even have ongoing relationships with all the Big Four.

In order to offer companies more choice in choosing an auditor and to increase competition among the Big Four, we call upon the SEC to reexamine the regulations that prohibit the Big Four firms from competing for audit assignments when they have performed disqualifying services in prior years. A modification in this policy that allows for greater flexibility and greater competition among the Big Four would enhance market forces in the profession and ultimately benefit our capital markets.

In addition to fostering greater competition among the top-tier firms, we need to remove nonmarket barriers impeding competition with the Big Four. Unfortunately, there are no easy means to that end, as there are tremendously high barriers for entry into this group. It would be unreasonable to try to expand the group by unwinding previous mergers — no matter how those mergers may appear in retrospect. In that same vein, a number of responsible commentators have said that mergers among second-tier firms would be unlikely to create a truly competitive alternative to the Big Four. These and other methods could create more weak firms, when what is needed are more strong ones.

Although the task of expanding the Big Four is difficult, it does not mean that it is impossible or unimportant. We call upon the SEC and the PCAOB, as well as the New York Stock Exchange, NASDAQ, and FASB, to make long-term expansion of the Big Four a high policy priority. We recommend, in particular, that these entities do the following:

- Support policies that help the entire profession become insurable (as described previously). Risk management is a huge barrier to growth for any firm seeking to audit public company clients.

- Clarify and streamline the accounting standards process to make it less expensive for firms to stay current of the latest pronouncements. FASB must address the problem of "infinite complication" in accounting rules, which makes it almost impossible for even the most knowledgeable and well-intentioned accountants to keep up. Further, the SEC should immediately end the process of "Speech GAAP," whereby accounting policy changes are simply announced by staff without prior public examination or discussion. More generally, the SEC must move away from the expectation that its policies are only of interest to a small cadre of Big Four accountants and affirmatively reach out to meet the needs of smaller firms — and include them in all debates about new rules and interpretations.

- All parties should actively encourage public companies to consider high-quality firms outside the Big Four — particularly by encouraging Wall Street underwriters and the investing public to accept other choices. This would include encouraging companies to use high-quality second-tier firms for (i) outsourced internal audit functions, (ii) the provision of tax and other accounting advice, (iii) separate authentication of control systems, and (iv) other nonaudit work.

At the end of the day, the engagement of an auditor is a private commercial matter, and reforms that increase the overall competitiveness of the profession may, in some instances, also help members of the Big Four become even more competitive. However, there should be some general acceptance of the view that intense consolidation has left many clients unhappy and our capital markets vulnerable to the shock of even further consolidation. It is important for all the players in the system to reconsider their roles in the current competitive situation and work to redress the risks inherent in it.

CONCLUSION

The action plan described in this paper offers no guarantees about the continued health of the auditing profession. Nothing is offered, for example, to resolve the considerable litigation that is already outstanding or to immediately address current staffing challenges. Nonetheless, we believe that it is significant to highlight some of the critical issues and offer a positive plan to address them.

Losing another auditing firm — or making auditing so unattractive that firms or their partners no longer want to provide the service — would have very negative consequences for the U.S. capital markets and the U.S. economy as a whole. The Chamber is committed to

preventing that development, and we hope that policymakers in Washington and on Wall Street are or will become similarly committed.

January 2006

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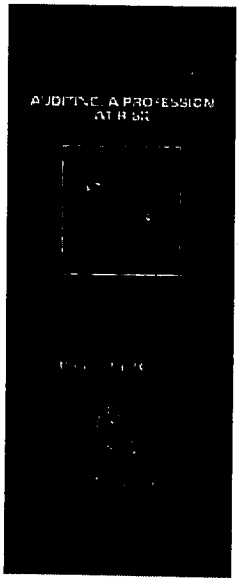
EXHIBIT 20a

Auditing: A Profession at Risk

Download the full report (PDF)



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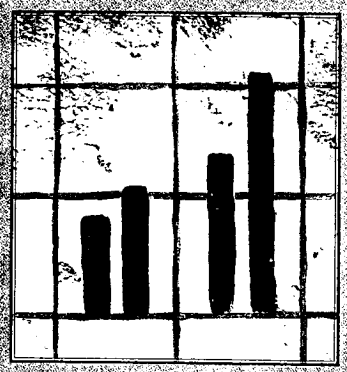
There continue to be debates about the role that the auditing profession itself has played in bringing about some of these circumstances, and what it can do on its own to address the current challenges. Nevertheless, the simple facts are that (i) confidence and stability are critical to the success of capital markets, and (ii) auditing helps bring these attributes to our markets. Instead of risking a crisis, it is important to act now to try to bring some stability back to the auditing profession. At the same time, action must be taken to ensure that the needs of companies are met and that they have access to high-quality, reasonably priced auditing services.

Download the full report (PDF)

EXHIBIT 21

Shareholder Activism: the Good, the Bad, and the Ugly



Presentation by Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce
at the *BOUTIES* Magazine Conference

Yale Club
New York, NY
April 21, 2006

As prepared for delivery

USCC 55299

Shareholder Activism: the Good, the Bad, and the Ugly

Presentation by Thomas J. Donohue
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at the *EQUITIES* Magazine Conference

Yale Club
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April 21, 2006

As prepared for delivery

USCC 55300

Shareholder Activism: the Good, the Bad, and the Ugly

This is the second in a series of major speeches by Tom Donohue on key capital market issues.

I'm delighted to be here today at an *EQUITIES* magazine conference. Editor Robert Flaherty has been referred to as the Mark Twain of the American capital markets—funny, blunt about the risks of investing in emerging companies, and basically optimistic about the range of possibilities offered by our entrepreneurial country.

Today, I'm going to talk about shareholder activism, and you might say that the Chamber's attitude toward the subject would fit right in on the pages of *EQUITIES* magazine. Here is why:

• We're discriminating: We know that not all forms of shareholder activism are alike.

• We don't take things at face value: We see some unfortunate things masquerading as reform, and we'll talk about the dangers of that in a minute.

• Yet we are basically optimistic: We think that engaged, vocal investors are good for American business.

Engaged, vocal investors are good for American business.

Let's start with a little history. As we all know, shareholder activism was given a big push forward by the watershed event that was Enron. But its root cause was something that's been brewing for at least two decades: a spectacular broadening of the investor class, as more Americans have become investors. Today, about half of all households—57 million in all—own stock directly or through mutual funds. That's nearly double what it was just 16 years ago.

About half of all households—57 million in all—own stock directly or through mutual funds.

Increasingly, what was once a country of wage earners is now a country of citizen investors. Corporations are no longer viewed merely as sources of jobs. They are seen as sources of value.

Think of the implications. We don't just plan for retirement with 401(k)s and IRAs. We plan for medical expenses with health savings accounts and for our children's education with 529 college savings plans and Coverdell accounts—all of which can be invested in the markets.

So—to put it mildly—a lot more people are a lot more interested in market performance than ever before. And we've got the Internet, 24-hour TV news, and the whole explosion of the financial media to feed this interest.

At the U.S. Chamber of Commerce, we recognize what this revolution means. Our role is not just to advocate for business. We have to advocate for value.

Our role is not just to advocate for business. We have to advocate for value.

And when we see changes that businesses need to make, we point them out. We recognize the need for greater transparency and smart corporate governance. We support intelligent regulation that gives investors confidence in the quality of information they are given. For example, in November, we launched a commission on the capital markets to find ways to update a regulatory structure that dates from the 1930s.

Greater public involvement in markets has put pressure—I view it as positive pressure—on all companies to maximize performance for their owners. And by performance, I mean the real common denominator—the one that unites every single owner, whether he or she is the heir to a great fortune or the hardworking wage earner who's socked away a few dollars in an IRA: return on investment.

In its best form, shareholder activism is improving significantly the return that all of us receive. In its worst form, it actually reduces these returns.

In its best form, shareholder activism aims squarely at improving returns on investment. In its worst form, it actually reduces those returns—but let's start with the good.

As I see it, shareholders are doing businesses a big service by demanding three types of reform.

One: Information should be made available to all investors so that they can make the best possible decisions. At the Chamber, we support the goal of electronic delivery of proxy and other investor relations documents. We are also behind the adoption of XBRL, which stands for extensible business reporting language, as an open standard for financial reporting because it will make cross-market analysis so much easier for investors.

Two: Managers should focus on the long-term value creation that benefits Main Street over the short-term earnings management that pleases Wall Street. As I have said many times, quarterly earnings guidance is a bad idea. Why? Let me tick off a few obvious reasons:

Managers should focus on long-term value creation that benefits Main Street over the short-term earnings that please Wall Street.

• Quarterly profit predictions narrowed down

to a penny or two per share don't say much about a company's long-term prospects.

• It's against the law to manage earnings—if you still do it and it ends up costing the stockholders money, you can get socked by class action lawsuits. These suits are a net loss for everybody—except the lawyers.

• It's bad for the long term. If managers starve R&D or marketing to keep short-term profitability up, they imperil the long-term future of their companies.

Today's investors should expect long-term value creation and that requires long-term strategy.

Which brings me to the third area of smart shareholder activism: The demand for greater transparency about strategy. Regulation FD was set up to keep companies from giving crucial information to just a handful of investors. But because of the way the rule was written, every public utterance by a corporate official can become grounds for some future SEC lawsuit or criminal prosecution. The effect of Regulation FD was not more disclosure—but less of it. We need sensible disclosure rules that allow managers to talk candidly with investors without fear of being sued.

Greater shareholder involvement may make some managers uncomfortable in

the short term, but on balance, companies are more responsive as a result, and that helps America's economy grow even faster. So I'd like to define this kind of shareholder activism as "pro-value."

But there is another kind of shareholder activism that reduces returns. I call it "anti-value." While it uses the language of investor capitalism and waves the banner of shareholder democracy, this kind of activism is, in fact, an anti-democratic, anti-markets approach to investment.

If pro-value activism promotes public involvement in markets, anti-value activism reduces it.

If pro-value activism promotes public involvement in markets, anti-value activism reduces it.

If pro-value activism raises returns, anti-value activism lowers them.

Anti-value activism is the act of saying "I'm shaping this company up," while you're actually "shaking it down."

How can you recognize this kind of activism? It tends to take a few distinct forms.

First, it often involves trial lawyers. Everyone here is familiar with these product liability cases that have little merit but end up costing companies millions to settle. We have the same thing in securities

litigation, where frivolous class action lawsuits are filed alleging that a stock fell because company management made false statements about its prospects. But here's the crazy thing: When the lawsuit is filed, the stock price usually falls again—costing the company's shareholders even more. No wonder most companies settle rather than fight. The bad publicity from a messy courtroom drama is often worse than the cost of settling. Either way, less is left over in the company treasury for dividends, buybacks, or earnings, all of which would help shareholders. So who benefits from all the legal work? The trial lawyers, not the investors.

Let's talk about the second value killer: government overinvolvement in financial markets. Government agencies in Washington and in all 50 state attorneys general offices are able to mobilize armies of career attorneys to investigate and indict businesses. I want to be clear about the role of these government lawyers: If there's clear evidence of real unethical or truly illegal conduct, the government should pursue the perpetrators with vigor. But as with lawsuits, a criminal or civil indictment damages a company's valuation so much that many executives settle as quickly as possible, whether they have done anything wrong or not. State attorneys general sometimes publicly threaten criminal prosecution if the company doesn't pay a fine or fire its

management—a form of extortion that has no place in our legal system.

Do investors gain anything from this? The state of New York has collected tens of millions of dollars in fines, but we can't be sure where those dollars have gone. One thing is for certain: They did not go into the pockets of shareholders who suffered losses.

What's worse, in a way, is what all this litigation does to long-term value creation. Because of the 20-20 hindsight that these litigators practice, CEOs and corporate boards are more reluctant to take the kinds of risks that produce long-term growth in companies and our economy. It's become so risky just to sit on a corporate board that many outstanding individuals are simply declining to serve. A number of companies have decided that being a publicly held corporation—with all the regulatory and litigation headaches—is not worth it. They would rather go private. Is this good for our growing investor class?

Let's talk about the third area of value destruction: Investors who will do anything—including breaking the rules—to make a buck. Hedge fund and private equity investors are a valuable and growing industry—they are creating pools of capital that help many companies grow. But a small minority of these investors spend a lot of time pressuring

management to do things that are antithetical to long-term value. Some push to take on lots of debt so that companies can pay special, one-time dividends. Some press for spin-offs or sales of assets that should stay in the company's fold. Sometimes rumor campaigns are started that drive down stock prices.

Bottom line: Such investors have their own objectives, their own agenda, and they're not necessarily out there to help you.

Then there are short sellers who use fraud and rumor to drive down the value of companies. They do this while claiming to be shareholder activists. I want to be clear that I am not challenging the legitimate use of the short sale. If you think a company is overvalued and are willing to bet its shares will fall, fine—that's a time-honored and legitimate investment strategy.

But if you feed bad information to regulators or the financial media or Internet chat rooms—that is not activism. It is fraud. And it's more common than you think.

Today, I want you to focus on one more type of anti-value activist—and I want to tell you how to fight back. Right now, investors are getting shrink-wrapped packages from companies containing proxy ballots. Many investors simply toss

Proxy battles are serious business—and increasingly, they are the weapons being used by labor unions or other special interest groups to advance their own objectives.

these materials away, figuring that the stock price is the thing that matters most in evaluating a company. But proxy battles are serious business—and increasingly, they are the weapons being used by labor unions or other special interest groups to advance their own objectives.

Not all proxy battles are created equal. Some are about value. Take the proxy fight over Hewlett-Packard's acquisition of Compaq—that probably passes this test.

But many times, proxy battles represent a power grab that hurts every other investor in the company.

Let me tell you about a particularly glaring incident. In 2004, CalPERS, the nation's largest public pension fund, took a lead role in an attempt to oust from Safeway the supermarket chain's chairman and two of its board members. At the time, CalPERS said its sole concern was to eliminate conflicts of interest and improve corporate governance.

But CalPERS had its own conflicts of interest. CalPERS' president was a union

official who had personally organized and hosted rallies against Safeway during a labor dispute. In fact, 11 of CalPERS 13 board members were union members, union officials, or government officials who received or solicited contributions from unions.

So who was CalPERS working for in its proxy battles? For the retirees and California taxpayers for whom it had a fiduciary duty to generate the best possible returns? Or for organized labor? Ultimately, the truth came out. But it does not always.

More recently, union and public pension funds have taken to peppering companies with a whole host of shareholder resolutions designed to further their own political and economic agendas. Sometimes they have even worked with the trial bar to propose resolutions that push companies to settle lawsuits.

Union and public pension funds have taken to peppering companies with a whole host of shareholder resolutions designed to further their own political and economic agendas.

They have also taken up the banner of "majority voting." Do you know what that is about? I can tell you that it is not about democracy. It is about a few groups who hold chunks of stock on behalf of retirees

who want more leverage to push social and political objectives. I wonder how many of these groups actually ask the retirees how they want their shares to be voted.

Increasingly, powerful public pension funds are using proxy battles to achieve what they could not win at the bargaining table: pro-union policies. These policies may be good for unionized workers, but they do not produce one cent of added value for the other shareholders. If they did, they would have been adopted long ago.

I should note that some union pension funds do pursue their objectives in a reasoned and responsible way. We may disagree frequently with union leaders on several issues, especially when it comes to their proposals that are anti-value, but on some matters, we can have a fruitful dialogue.

For example, we have had very positive discussions with the Carpenters Union on issues relating to executive compensation. We don't always agree—but that isn't the point. The point is whether activism is really intended to make companies better and add value—or whether it is just designed to score points in the media and advance one agenda over everyone else's.

Anti-value activists would be less successful if it were not for a unique quirk in the proxy process. As it turns out, the gatekeeper, bookkeeper, and goalkeeper

for virtually the entire proxy process in America is controlled by one entity that has wrapped itself completely in the mantle of shareholder rights. I am speaking of Institutional Shareholder Services, a self-appointed expert on proxy battles and matters of corporate governance.

Although there are other proxy research services, such as Glass Lewis, ISS is so dominant that its opinion on any given proxy vote is, in effect, the default position for the entire securities industry. If you are a mutual fund manager, you're not obligated to vote with ISS—but you'd better be prepared with a thought-out explanation for why you didn't, because those are the rules.

ISS has even cemented its virtual monopoly with an electronic proxy voting platform that is used by an increasing number of mutual and pension funds—and votes their shares with its own views.

If you are going to set yourself up in this way as prosecutor, judge, jury, court clerk, and stenographer for all matters of corporate governance, you had better be above reproach yourself. But ISS works all sides of the fence here to make a buck. ISS is a private business that does more than just advise shareholders on which companies need to be shaken up by a proxy challenge. It also advises companies on how to raise their governance ratings—so they avoid proxy battles in the first place.

Imagine if the Stanley Kaplan test prep agency not only ran a course training high schoolers how to take the SATs, but also designed the tests, scored them, and then decided who gets into which college. You think college seniors would feel a bit more obligated to enroll in Stanley Kaplan courses?

In effect, ISS does the same thing. We have a term for this in America: It's called a shakedown.

At the U.S. Chamber, we don't often find ourselves in the position of pushing for more regulation. However, when a monopoly has asserted near-total control over a wide range of our economy, with huge implications on our financial markets, economic growth, and household wealth, shouldn't someone be asking questions?

Some people will say it's disingenuous to complain about some forms of shareholder activism while welcoming others. But I disagree. The anti-value crusaders are not real shareholder activists. They have simply borrowed the vocabulary and mechanics of shareholder activism to suit their needs.

Anti-value crusaders are not real shareholder activists. They have simply borrowed the vocabulary and mechanics of shareholder activism to suit their own needs.

What the pseudo-activists are giving us is not more shareholder democracy, but less.

If U.S. financial markets become known throughout the world as the playground of union-run pension funds, trial lawyers, and government litigators, and not as a place for value creation and returns on investment, capital will stop coming here. It is already happening: In 2005, 9 of the largest 10 IPOs globally were launched outside the U.S. Out of the top 25, 23 went overseas.

In 2005, 9 of the largest 10 IPOs globally were launched outside the U.S. Out of the top 25, 23 went overseas.

Here is what I see happening if we do not act: The cost of capital will rise. Businesses won't grow as quickly. Neither will jobs or wages. And neither will the 401(k)s, IRAs, HSAs, and 529 college savings plans of 84 million Americans.

Shareholder activism that works toward the same goals these 84 million people share—a better return on investment—will always be good for America's economy. But shareholder activism that elevates one group's agenda over the goals of other investors doesn't just ruin companies—it ruins a country.

How do we end this madness? Remember what shareholder activism is all about—

Shareholder activism that works toward the same goals these 84 million people share—a better return on investment—will always be good for America's economy.

the demand for value and the right of all shareholders to be treated equally. There is an expression in journalism—when your mother tells you that she loves you, check it out. So when someone tells you that a CEO is no good, check it out. Maybe he or she is not up to par—but maybe the person whispering in your ear has another motive for spreading bad advice. If some hedge fund says a company's board needs to be shaken up, check it out: Are they still long in the stock? When someone says your company needs a new labor policy, check it out: Who says?

In other words, use the same analytical skills on proxy battles and corporate governance disputes that you use when you look at a company's balance sheet or earnings statement. Don't just assume ISS or someone else is looking out for your interests. They have their own agenda—and it isn't yours. Scrutinize proxy proposals just like you would scrutinize a proposed merger or a new product launch.

Do you, as an owner, want to be part of something that kills long-term value? Of course not—yet that is what many investors are doing every day when they let

ISS and others vote their shares. They are standing by as a company's value—their company's value—is getting bludgeoned.

We all get those shrink-wrapped proxy ballots in the mail. We all know it's a pain to look at them, one-by-one. But check them out and pay attention. Make sure that someone isn't trying to force a company you own to adopt one of their pet policies. Make sure your company's managers are always focused, first and foremost, on the creation of value. After all, that's the true definition of shareholder activism.

Thank you.

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EXHIBIT 22

The Thompson Memorandum's Effect on the Right to Counsel in Corporate Investigations

Testimony by Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce

Senate Judiciary Committee
September 12, 2006

As prepared for delivery

The Thompson Memorandum's Effect on the Right to Counsel in Corporate Investigations

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Senate Judiciary Committee
September 12, 2006

As prepared for delivery

Good morning, Mr. Chairman and members of the committee. My name is Tom Donohue. I am president and CEO of the U.S. Chamber of Commerce, the world's largest business federation, representing some 3 million businesses.

I am also testifying on behalf of the Coalition to Preserve the Attorney Client Privilege, which includes most of the major legal and business associations in the country.

I am here to ask the Committee, either through oversight of the Department of Justice (DOJ) or by enacting legislation, to invalidate provisions of DOJ's Thompson Memorandum and similar policies at other federal agencies that prevent executives and employees from freely, candidly, and confidentially consulting with their attorneys.

While the intention of former Deputy Attorney General Larry Thompson to crack down on corporate wrongdoers was laudable, the policies set forth in the Thompson memo violate fundamental constitutional and other long recognized rights in this country.

They obstruct—rather than facilitate—corporate investigations.

And, they were developed—and implemented—without the involvement of Congress or the judiciary.

This would perhaps be just another classic case of a federal agency overstepping its bounds if the consequences were not so profound.

The attorney client-privilege is a cornerstone of America's justice system—this privilege even predates the Constitution and the Bill of Rights.

The attorney client-privilege is a cornerstone of America's justice system—this privilege even predates the Constitution and the Bill of Rights.

The Thompson memo violates this right by requiring companies to waive their privilege in order to be seen as fully cooperating with federal investigators.

This has effectively served notice to the business community, and the attorneys that represent them, that if you are being investigated by the Department and you want to stay in business, you better waive your attorney-client privilege.

A company that refuses to waive its privilege risks being labeled as uncooperative, which all but guarantees that it will not get a settlement.

The "uncooperative" label severely damages a company's brand, shareholder value, their relationships with suppliers and customers, and their very ability to survive.

The "uncooperative" label severely damages a company's brand, shareholder value, their relationships with suppliers and customers, and their very ability to survive.

Being labeled uncooperative also drastically increases the likelihood that a company will be indicted and one need only look to the case of Arthur Andersen to see what happens to a business that is faced with that death blow.

Once indicted, a company is unlikely to survive to even defend itself at trial or make the outcome of that trial relevant. Keep this fact in mind the next time you hear a Justice official use the phrase "voluntary waiver."

The enforcement agencies argue that waiver of attorney-client privilege is necessary for improving compliance and conducting effective and thorough investigations.

The opposite is true. An uncertain or unprotected attorney-client privilege actually diminishes compliance with the law.

An uncertain or unprotected attorney-client privilege actually diminishes compliance with the law.

If company employees responsible for compliance with complicated statutes and regulations know that their conversations with attorneys are not protected, they will simply choose not to seek legal guidance.

The result is that the company may fall out of compliance—not intentionally—but because of a lack of communication and trust between the company's employees and its attorneys.

Similarly, during an investigation, if employees suspect that anything they say to their attorneys can be used against them, they won't say anything at all.

That means that both the company and the government will be unable to find out what went wrong, punish the wrongdoers, and correct the company's compliance system.

And there's one other major consequence—once the privilege is waived, third party private plaintiffs' lawyers can gain access to attorney-client conversations and use them to sue the company or obtain massive settlements.

Despite our coalition's repeated attempts to work with Justice to remedy these problems, Justice has refused to acknowledge the problem or has argued that the attorney-client privilege waiver is only very rarely formally requested in an investigation.

However, to debate the frequency of "formal" waiver requests or "voluntary waivers" is to engage in a senseless game of semantics.

To debate the frequency of "formal" waiver requests or "voluntary waivers" is to engage in a senseless game of semantics.

As the CEO of this country's largest business association and as a member of three corporate boards, I know how this game by prosecutors is played. As long as the Department of Justice exercises a policy that threatens companies with indictment if they do not waive their privilege, companies will feel compelled to waive—whether a front-line prosecutor "formally" requests the waiver or not.

Efforts to reform the Thompson

Memorandum have been ineffective. Last year, then-Associate Attorney General Robert McCallum issued an update to the Thompson Memo that instructs U.S. attorneys to issue a waiver review process for each of their offices but does nothing to change internal policy that penalizes companies for preserving their attorney-client privilege.

What's perhaps most disturbing is that the Thompson Memo was developed without any input from the Congress or the Judiciary. In fact, the only independent bodies that have actually reviewed these policies have rejected them.

Compromise reforms or half-baked ideas for softening the Thompson memo will not fix its fundamental shortcomings and may threaten to cause more problems than they solve.

The only solution is for Congress, either through its oversight of the Department or directly by enacting legislation, to enact new policies that do not allow DOJ or other agencies to threaten businesses with the death penalty for exercising their fundamental right to consult freely with their attorneys.

The only solution is for Congress, either through its oversight of the Department or directly by enacting legislation, to enact new policies that do not allow DOJ or other agencies to threaten businesses with the death penalty for exercising their fundamental right to consult freely with their attorneys.

Let me be very clear about our motivation: we are not trying to protect corrupt companies or businesspeople. Nobody wants corporate wrongdoers caught and punished more than legitimate and honest businesspeople.

Rather, our efforts are designed to protect well-established and vital Constitutional and common-law rights and to facilitate legitimate investigations by encouraging candid and confidential conversations.

Thank you very much. I look forward to your questions.

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EXHIBIT 23

Trends In Union Corporate Campaigns

A Briefing Book

Jarol B. Manheim
The George Washington University

The U.S. Chamber of Commerce

TRENDS IN UNION CORPORATE CAMPAIGNS

A BRIEFING BOOK

Jarol B. Manheim

The George Washington University

A "corporate campaign" is an attack by a union on the ability of a company or industry to conduct its routine business. The objective is to generate so much pressure on the "target" that it will give in to union demands. This briefing book provides the reader with an introduction to the corporate campaign and an overview of its increasingly important role in U.S. labor relations.

Jarol B. Manheim is Professor of Media and Public Affairs, and of Political Science, at The George Washington University, where he was the founding director of the School of Media and Public Affairs. He has been described as one of the world's leading authorities on campaigns against business. Among his books on the subject are The Death of a Thousand Cuts: Corporate Campaigns and the Attack on the Corporation *(Lawrence Erlbaum Associates, 2001),* Biz-War and the "Out-of-Power Elite": The Progressive Left Attack on the Corporation *(Lawrence Erlbaum Associates, 2004), and* Power Failure, Power Surge: Union Pension Fund Activism and the Publicly Held Corporation *(HR Policy Association, 2005).*

The United States Chamber of Commerce is the world's largest business federation, representing 3,000,000 businesses, 2,800 state and local chambers of commerce, 830 business associations, and 102 American Chambers of Commerce in 87 countries.

Table of Contents

Executive Summary

This briefing book summarizes the phenomenon known as the "corporate campaign" and identifies current trends in campaign strategy and tactics. Among the principal observations and findings are the following:

- The corporate campaign was invented by the New Left in the 1970s, and by the 1990s was in widespread use by the labor movement. To date, unions have waged nearly 300 campaigns against employers, primarily, though not exclusively, to facilitate organizing.

- Corporate campaigns employ "power structure analysis" to identify and exploit vulnerabilities in the critical stakeholder relationships on which all companies depend. This broad strategic approach is then implemented through tactics that range from highly sophisticated financial and governance initiatives to street theater and even psychological warfare.

- Typically, the role of the corporate campaign today is to force management to accede to union demands for "card check and neutrality"—a process by which the union certification procedures administered by the National Labor Relations Board (NLRB) are effectively circumvented. A recent innovation here is the substitution of non-NLRB elections for card check, which has been coupled with a widening attack on the NLRB itself.

- The use and conduct of corporate campaigns has evolved over time. Some recent trends:

  - increasing and highly strategic use of shareholder resolutions and proxy voting to pressure directors and senior management;

- continued development of infrastructure (courses, manuals, funding mechanisms) to support corporate campaigns, and a growing population of professionals, now numbering in the hundreds, whose primary job responsibility is to plan and lead them;

- increasing numbers of multi-union, or even movement wide, attacks on individual companies, including activity by transnational union alliances and international labor organizations;

- rapid expansion of networks and coalitions of nonunion allies and surrogates that advance and legitimize union attacks on companies, both within the U.S. and internationally;

- an increase in the use of corporate campaigns for political, policy or ideological purposes, rather than for economic/employment purposes.

This report concludes that corporate campaigns play an important and growing role as an alternative to labor-management relations as envisioned in the nation's principal governing legislation. Their continued widespread use may have the result of rendering that legislation ineffective or irrelevant.

INTRODUCTION

A corporate campaign is a multifaceted and often long-running attack on the business relationships on which a corporation (or an industry) depends for its well-being and success. It is a highly sophisticated form of warfare in which a target company is subjected to diverse attacks—legislative, regulatory, legal, economic, psychological—the function of which is to so thoroughly undermine confidence in the company that it is no longer able to do business as usual. The union waging the campaign then offers to withdraw the pressure in return for substantial concessions. These concessions might include such items as agreement upon otherwise unacceptable contract terms, silence with respect to the company's preferences regarding the unionization of its workforce (what the unions term "neutrality"), or even an agreement to recognize the union without a formal vote by the employees. The more sensitive a company is to its reputation, the more susceptible it is to public fears about the safety or propriety of its operations, or the more highly regulated its lines of business, the more vulnerable it is to such attacks.

In this briefing book, we will summarize the origins, strategies and objectives of these campaigns, and will identify both long-term and recent trends in their development.

ORIGINS

Corporate campaigns trace their origins to several sources. Two of the most important include the Students for a Democratic Society (SDS) and long-time community activist Saul Alinsky. In its defining 1962 manifesto, *The Port Huron Statement*, drafted by then-president Tom Hayden, the SDS noted:

> We can no longer rely on competition of the many to assure that business enterprise is responsive to social needs.... Nor can we trust the corporate bureaucracy to be socially responsible or to develop a 'corporate conscience' that is democratic.... We must consider changes in the rules of society by challenging the unchallenged politics of American corporations.[1]

SDS was soon to be swept up in the anti-war movement of that era and, with the single exception of a demonstration organized in 1964 by then-president Todd Gitlin and then-vice president Paul Booth designed to pressure Chase Manhattan Bank to stop financing the Apartheid regime in South Africa, did not engage in significant anti-corporate activism.[2] But numerous SDS alumni, including Mr. Booth and perhaps most notably Michael Locker, went on to careers in the labor movement, where they helped to put these strategies into motion.

In the meantime, Mr. Alinsky, acting independently, was already putting some of these ideas to work, most notably in a campaign he led against Eastman Kodak in 1966 on behalf of a coalition of African-American organizations seeking to open employment opportunities in Rochester, New York. Significantly, Mr. Alinsky chose Kodak as his target, not because it was the worst corporate citizen in town, but because it was the best. He reasoned that the

company was so image conscious that it would be the most likely to yield to the group's demands.[3] Of more lasting import, however, was his tactical advice to anti-corporate activists, which, in a book of the same name, took the form of thirteen "Rules for Radicals." They included:

1. Power is not only what you have, but what the enemy thinks you have.

2. Never go outside the experience of your people.

3. Whenever possible go outside the experience of your enemy.

4. Make the enemy live up to their own book of rules.

5. Ridicule is man's most potent weapon.

6. A good tactic is one that your people enjoy.

7. A tactic that drags on too long becomes a drag.

8. Keep the pressure on.

9. The threat is usually more terrifying than the thing itself.

10. Maintain a constant pressure upon the opposition.

11. If you push a negative hard and deep enough it will break through into its counter-side.

12. The price of a successful attack is a constructive alternative.

13. Pick the target, freeze it, personalize it, and polarize it.[4]

Mr. Alinsky's book is still in print today, and is widely regarded as required reading for corporate campaigners.

STRATEGY

The central strategic concept underlying the corporate campaign is known as power structure analysis. As characterized by Ray Rogers, who, with Mr. Locker, is generally credited with developing labor's first corporate campaigns, waged by the textile workers union against Farah Manufacturing and J.P. Stevens in the mid-1970s, power structure analysis is a means of "organizing workers" by "disorganizing companies."[5] Or as he put it on another occasion,

> The goal of a corporate campaign is to polarize the entire corporate and financial community away from a primary target, thus pulling its most crucial underpinnings out from underneath it.[6]

What might such polarization look like? The following excerpt from a news story on efforts to keep Wal-Mart Supercenters out of the Washington, DC, market—part of a national effort by labor to limit Wal-Mart's growth by attacking its role as corporate citizen —is a good exemplar.

> "I would not stand up in front of a zoning meeting and say, 'I am here to bring you Wal-Mart,' " said one local developer, who spoke on condition of anonymity for fear of jeopardizing future relations with the company. "There is an anti-Wal-Mart hysteria in this area."[7]

In other words, the campaign's ability to create a negative image of the company was sufficiently powerful in this instance to lead a stakeholder—in this case a real estate developer—to act differently than he otherwise might on a routine matter, and in a way that was disadvantageous to the company. In such

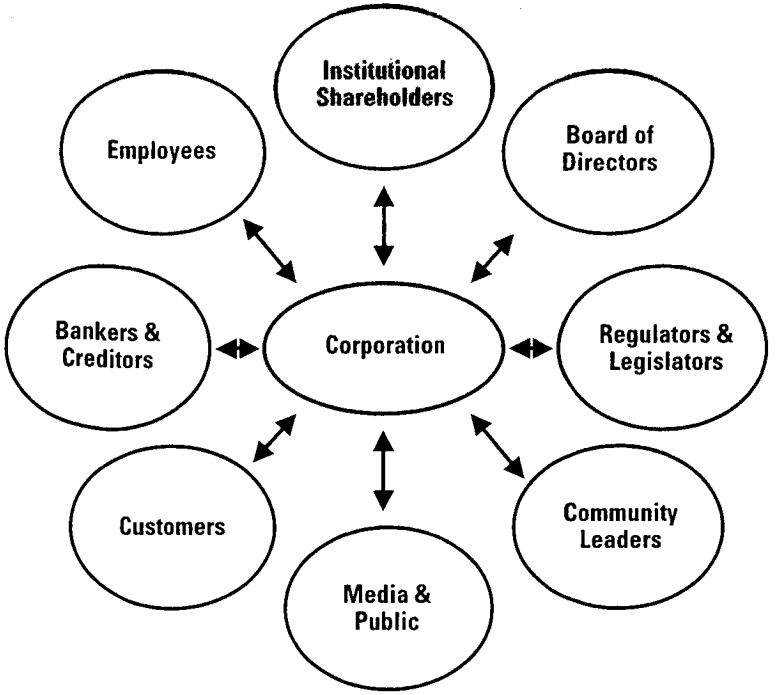


Figure 1. Selected Corporate Stakeholder Relationships Used in Power Structure Analysis[8]

circumstances, it is the ability to establish prevailing perceptions, which may or may not be grounded in truth, that gives these campaign attacks their power.

Power structure analysis is illustrated in Figure 1. In applying this technique, a prospective attacker locates the target company in the center of a diagram, and arrays around it all of the key stakeholder relationships upon which it depends for its success and well-being. These will vary, of course, from one company to the next, but will generally include some or all of the categories identified in the figure. Once this list is complete, the attacker

then examines each relationship in detail looking for its principal strengths and vulnerabilities. The identification and assessment of these stakeholder relationships requires extensive research, and can take months or even years to accomplish.

Once the assessment of the stakeholder relationships is completed, the results—and primarily the vulnerabilities that have been identified—are set against the capabilities of the attacker. These might include supporters within the company, existing alliances with interested third parties, the availability of themes or data of particular potential value in attacking a given company, or the like. The juxtaposing of attacker capabilities with target vulnerabilities will produce a prioritized list of strategies and tactics to be deployed. Typically, the attacker will then start at the top of the list and, over time, work as far down it as available staff, money and other resources permit. In some cases, unions have been known to devote literally millions of dollars, and twenty years or longer, to such efforts. As Bruce Raynor, now the President of UNITE HERE, once put it,

> To be successful [in organizing], I believe you have to be relentless.... We're not businessmen, and at the end of the day they are. If we're willing to cost them enough, they'll give in.[9]

Because of their common origin in power structure analysis, all corporate campaigns are precisely the same, and every corporate campaign is unique. The commonality lies in the underlying analysis and exploitation of stakeholder relationships, and the idiosyncrasy arises from the fact that such an analysis will produce a different outcome in every instance.

While this description of power structure analysis may make it sound as if the union in question is recruiting stakeholder allies to

Table 1. Tactics Employed By Unions Engaged In Corporate Campaigns

Introduce shareholder resolutions designed to weaken the independence of management or directors
Encourage ministers to give sermons critical of company or executives (including those in their own congregations)
Distribute to his/her neighbors literature attacking the CEO
Allege or imply sexual liaisons among executives
File frivolous unfair labor practice claims
Generate conflicts among religious groups, e.g., between differing interpretations of Catholic social teachings on the nature of a "just" workplace
Recruit celebrities or prominent politicians to pressure the company
Send postcards to maternity patients of a healthcare system warning their babies may be born on soiled or bloody linens because of a threatened laundry strike
Salting — place union-paid organizers on a company payroll for the purpose of organizing and generating inside pressure on management
Establish anti-company Web sites
Establish Web sites to track/attack individual directors or executives
Commission, prepare and distribute white papers attacking company
Conduct Workers Rights Boards, hearings or town hall meetings at which unions and their allies place the company on trial and find it "guilty" of anti-union activity
Fly anti-company banners from small planes at athletic events
Challenge the zoning or permitting of any new facilities sought by the company
Picket and/or disrupt corporate annual meetings
Attack the company's safety or environmental practices
Place print, radio, television, billboard, other advertising attacking the company

Table 1, Continued

Post warnings or contact customers to notify of potentially embarrassing or inconvenient experiences if they patronize the company
Pressure company through surrogates such as Jobs with Justice, National Interfaith Committee for Worker Justice
Encourage investigations of potential antitrust, tax or other violations
File, encourage or support litigation against the company
Leverage differing international labor climates against U.S.-based multinationals or U.S. subsidiaries of non-U.S. (e.g., European) companies
Use the OECD and other international organizations to pressure company
Employ race, class and similar themes as elements of attacks on the company

its cause, the dynamic is actually rather different. One principal objective of pre-campaign research is to identify the full range of each stakeholder's own interests and objectives and to cull out those that might be selectively activated to advance the cause of the campaign. The union then looks for opportunities to set those stakeholder self-interests in motion. When practiced successfully, this can be a very sophisticated exercise. Table 1 lists a few of the tactics employed by unions engaged in corporate campaigns.

A definitive, but hardly unique, example of selective activation, and one with enduring consequences, is provided by a campaign waged by the hotel employees union (HERE) against Marriott International. At the time, 1998, HERE Local 2 was trying to organize workers at the company's hotel in downtown San Francisco.[10] The Marriott family owned about 20 percent of the company's shares, and private investors another 30 percent, with

the balance held by institutional investors. In order to facilitate acquisitions, the company wanted to expand the number of its shares. At the same time, the family wanted to retain its influence over company affairs. So management proposed the establishment of two classes of stock, one of which, termed a "super voting" class, would carry ten votes per share rather than the customary one vote. Most of the super shares would be held by the Marriott family.[11]

Sensing an opportunity to demonstrate its clout, HERE began an effort to line up votes against the dual-stock proposal. To this end, the union encouraged a small proxy voting advisory firm, Institutional Shareholder Services (ISS), to advise its clients—comprising many of the nation's largest institutional shareholders—to oppose the change on the grounds that their own influence over the company would be diluted. With support from the California Public Employees' Retirement System (CalPERS) and other public employee pension funds, the proposal was defeated.[12]

This was a signal development in two important ways. First, it illustrated the selective activation of corporate stakeholder pressure by a union, not by recruiting allies to support its organizing, but by developing lines of attack that resonated with the interests of the stakeholders themselves. In the words of HERE Research Director Matthew Walker,

> People assume that there is a division between labor and capital. The fact is that we demonstrated an ability to identify with our fellow shareholders in Marriott and to build an alliance with shareholders that many people didn't think was possible.[13]

Second, in a way that has helped prove Mr. Walker's words prophetic, it set ISS on a path in support of proxy voting initiatives by labor that would become highly significant within a very short time.

When fully deployed, a corporate campaign will generate a rising crescendo of pressures on management, most of them coming from traditional allies, business partners and other supporters whose concerns cannot be ignored. As Mr. Raynor's comments suggest, over time these pressures will consume more and more of management's attention, distracting the company's key decision-makers from their more routine daily responsibilities. The union's attacks on the company will be designed to stigmatize those who continue to engage in business-as-usual with the target—whether that means selling it goods and services, remaining a customer or client, accepting its claims to be following extant regulations, or merely acknowledging its contributions as a corporate citizen. In effect, the objective is to embarrass key groups into altering their behaviors with respect to the company, the operative assumption being that those behaviors in the pre-campaign period were central to the company's success, and that changing them will prove disadvantageous to (generate pressure on) the company. If all of this works as intended, the net result will be to change the target company's decision-making calculus in ways that benefit the union.

OBJECTIVES

Sometimes, where employers already have unionized workforces, those "benefits" take the form of contract concessions, and sometimes, where the union has policy interests, they take the form of political concessions. Recent campaigns by the so-called Coordinated Bargaining Committee, representing fourteen unions with members employed by General Electric, are an example of the former. The 2005 campaign by organized labor against the Bush administration's proposed Social Security reforms, in which the unions pressured individual financial services companies to drop their support for the plan, illustrates the latter. But most of the action in corporate campaigns today, and certainly the most extensive and most aggressive campaigns, are centered on efforts to organize workers.

The earliest corporate campaigns, such as those at Farah and J.P. Stevens in the 1970s, were focused on organizing, but in that era the explicit objective was to bring about representation elections as provided under the National Labor Relations Act. In these elections, once at least 30 percent of workers in a prospective bargaining unit sign cards petitioning the National Labor Relations Board (NLRB) to conduct a secret-ballot election, the regional office(s) of the NLRB will administer a vote, usually in the workplace itself. As in all things bureaucratic, there are rules of procedure, the basic result of which is that both the union and the company are permitted to communicate their views to the workers, after which the workers mark their ballots. The NLRB tallies the votes and, if a majority of workers so indicate, certifies the union as their bargaining agent. The employer is then required to bargain with the union. We can think of this as retail organizing — gaining the right to represent workers from the bottom up, vote by vote. This procedure is illustrated in Figure 2(a).

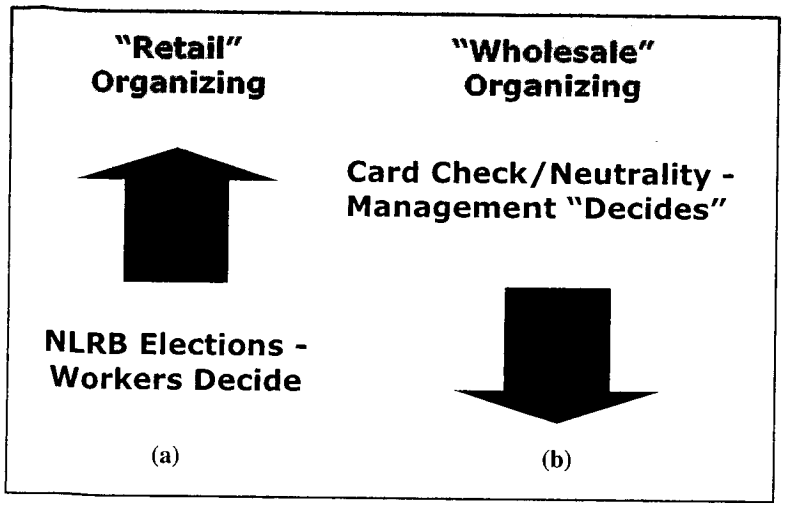


Figure 2. Retail versus Wholesale Organizing

From the unions' perspective, this procedure has proven problematic in two ways. First, it is very expensive. Some estimates place the cost at as much as $1,000 per worker, win or lose. And second, it is successful only slightly more than half the time. In recent years, unions have been winning around 55 percent of NLRB-administered, secret-ballot elections. And in fact, the actual number of such elections has been declining, from more than 7,000 per year in the 1960s to around 2,000 per year today. In 2003, for example, the NLRB conducted 2,133 certification elections. The elections themselves are being conducted in smaller and smaller workplaces, so that even union victories count for less than they once did. The 2,133 elections in 2003, for example, when set against the results of an additional 372 decertification elections, in which workers already represented by a union vote on whether to terminate that relationship, produced a net gain in union membership for the year of a mere 30,436.[14]

Faced with these numbers and trends, and with what they regard as a substantial and growing capability of companies to counter their appeal to workers through so-called union avoidance consultants, unions have turned to an alternative organizing strategy, which we can think of as wholesale organizing. This approach was characterized more than a decade ago by Joe Crump, an official of a United Food and Commercial Workers local, when he wrote,

> Employees are complex and unpredictable. Employers are simple and predictable. Organize employers, not employees.[15]

This alternative approach, which today tends to center on a tandem of union demands—for "card check" and "neutrality"—is illustrated in Figure 2(b).

Card check is a procedure under which a company agrees to recognize a union once that union produces evidence that a majority of the company's workers have signed authorization cards. These cards can be signed in the workplace, but elsewhere as well, including the employees' homes, or even online, and the signatures themselves may not be easily revoked. Once a majority have signed, the matter is settled. No election is required. A neutrality agreement is a companion arrangement under which the company accedes that, during the period in which the union is soliciting signatures on cards, it will not say or do anything to express management's view of unionization or its effects on the workplace or the workers. The union has much greater flexibility in soliciting signatures under card check, which is generally unregulated, than under the NLRB-administered solicitation process, and the company's voice is muzzled under neutrality, leaving only the union's voice to be heard. The unsurprising result is that, where card check and neutrality are accepted by

management, unions have a significantly higher rate of success in recruiting members. One study conducted for the AFL-CIO set the success rate in such circumstances at more than 70 percent.[16]

One of the challenges labor faces in arguing for card check over NLRB-administered certification elections is a rhetorical one. Consider the statement made by UNITE HERE President Bruce Raynor in discussing that union's organizing drive at Cintas, a commercial laundry and uniform company: "There's no reason to subject the workers to an election."[17] It is difficult for an ostensibly democratic movement to sustain such a position opposing secret-ballot elections.

Perhaps in recognition of that difficulty, unions are now making an alternative demand on employers—for a secret-ballot election outside the purview of the National Labor Relations Board (typically also to be accompanied by a neutrality agreement). This is the case, for example, in an organizing campaign at Yale New Haven Health, and in a growing number of other such efforts. In these instances, the rhetoric is somewhat different, as illustrated by William Meyerson of SEIU Local 1199-NE: "The NLRB election process is neither fair nor democratic and favors management."[18] Mr. Meyerson went on to describe an alternative process being proposed at Yale New Haven through which a third party, such as a panel of legislators or a council of community leaders would conduct the vote.[19] In addition to negotiating the terms of the vote, the employer in such cases effectively waives its right of appeal of the outcome since the vote will have occurred outside of the normal regulatory process. Indeed, that process is being subjected to increasing attacks that appear to be aimed at undermining confidence in the NLRB itself.

While some employers are quite open to facilitating the unionization of their workforces, and while some groups of

nonunion employees are affirmatively interested in union representation, many are not. In such circumstances, why would an employer agree to card check and neutrality knowing that doing so might well produce an outcome contrary to its own interests and/or those of its employees? That is where the corporate campaign comes into play. As a component of organizing strategy, the function of the corporate campaign is to generate sufficient pressure on a company, from the top down, to alter its assessment of the relative costs and benefits of yielding to the demands of the union. In theory, and often in practice, the reality of anti-corporate warfare, and sometimes the mere threat of it, will make the company much more responsive to the union's demands.

Corporate Targets

Corporate campaigns are not isolated phenomena. A count of these efforts from their inception in 1974 through 1999, for example, identified approximately 200 such engagements, with the number increasing at an accelerating rate.[20] Not coincidentally, AFL-CIO President John Sweeney promised during his inaugural address in 1995,

> We will use old-fashioned mass demonstrations, as well as sophisticated corporate campaigns, to make worker rights the civil rights issue of the 1990s.[21]

It is likely that the total number of such efforts is now approaching 300 or more. Table 2 lists a selection of companies targeted in union or movement-wide corporate campaigns during the period 2000-2005. Some of these campaigns are still underway at this writing. A review of the list will show that companies are targeted without respect to their size, location, industry or prominence.

Table 2. Selected Corporate Campaigns, 2000-2005

Target	Union(s)
Adams Mark Hotels	HERE
Advocate Health	SEIU
AK Steel	USWA
Aladdin Hotel & Casino	HERE
Angelica	UNITE HERE
Borders Books	UFCW
Boston Properties	SEIU
Catholic Healthcare West	SEIU
Cintas	UNITE HERE, Teamsters
Comcast	CWA
Continental Carbon	PACE
DHB Point Blank	UNITE HERE
DHL	Teamsters
Duane Reade	UFCW
Ensign Group	SEIU
Equity Office	SEIU
Exxon Mobil	PACE/Steelworkers
Fidelity Investments	AFL-CIO
Financial Services Industry	AFL-CIO, SEIU
Gallo	UFW
General Electric	IUE (CWA), others
Gillette	SEIU, UNITE HERE
H&M	UNITE
Healthcare Industry	SEIU, AFSCME
IBM	CWA
Imerys	PACE (USWA)
KSL Recreation	UNITE HERE
Labor Ready	AFL-CIO (Building Trades)
Maersk	Teamsters
Mount Olive	FLOC
Nebraska Beef	UFCW

Table 2. Continued

Target	Union(s)
Nike	UNITE
Oregon Steel	USWA
Overnite Transportation	Teamsters
Pacific Maritime Association	ILWU
PPR – Brylane – Gucci	UNITE
ResCare	SEIU
Resurrection Health	AFSCME
Quebecor	GCIU/Teamsters
Safeway	UFCW
Saint Gobain	UAW
Sky Chef	HERE
Smithfield Foods	UFCW
Sodexho	UNITE HERE, SEIU, (AFSCME)
Station Casinos	UNITE HERE
Sutter Health	SEIU
Taco Bell	Coalition of Immokalee Workers
Tenet Health Care	SEIU
Titan Tire	USWA
Trico Marine	OMU
Tyson Foods	Teamsters, UFCW
Verizon	CWA
Wackenhut Security	SEIU
Wal-Mart	UFCW, SEIU, AFL-CIO
Westfield Centers	SEIU
Yale University	UNITE HERE
Yale New Haven Health	SEIU

KEY: AFSCME – American Federation of State, County and Municipal Employees; CWA – Communications Workers of America; FLOC – Farm Labor Organizing Committee; GCIU – Graphic Communications International Union, which merged into the Teamsters shortly before the campaign was concluded; HERE – Hotel Employees and Restaurant Employees International Union, later merged into UNITE HERE; ILWU – International Longshore and Warehouse Union; OMU – Offshore Mariners United; PACE – the paper and chemical workers union, later merged into the Steelworkers; SEIU – Service Employees International Union; UAW – United Auto Workers; UFCW – United Food and Commercial Workers; UNITE – textile workers union, later merged into UNITE HERE; UNITE HERE – the merger union of the textile workers and hotel/restaurant workers unions; USWA – United Steelworkers of America.

TRENDS

Today's corporate campaigns share many characteristics with those of the 1970s and 1980s, but where those early efforts were experimental and often hit-or-miss in nature, the techniques employed in contemporary campaigns have been tested and optimized over time. They are the products of thirty years of distillation and refinement. This suggests the operation of an evolutionary process that is worth understanding. One way to accomplish that is to consider several long-term or emergent trends in corporate campaigns.

Other People's Money. Without question, the most significant development in corporate campaigns over the last decade has been the increasing emphasis the unions place on leveraging the target companies' financial stakeholders, and most especially their institutional shareholders, to increase the pressure on management and the board of directors. The reasons for this are at least two-fold. First, labor has followed something of a natural progression around the wheel of stakeholders identified through power structure analysis, shifting from one emphasis to the next in search of relationships that can actually impact on management. Working through the principal owners of the company, the institutional shareholders, has emerged as the tactic with the greatest average potential to achieve campaign objectives. At the same time, and in a much larger context, this emphasis on shareholder activism plays to one of labor's few great strengths, its ability to exploit a significant share of the $7.5 trillion currently held by public employee, single employer, and multiemployer pension funds. By unleashing the proxy power stored in the equity portions of these portfolios, and by pressuring the financial services industry to act "pro-socially" by voting still other trillions of dollars worth of proxies in favor of labor's shareholder agenda,

the unions are in the process of transforming their movement from one based in representing workers to one based in managing their collective financial resources.

The potential of this strategy was first identified by Peter F. Drucker in 1976 in his book *Unseen Revolution: How Pension Fund Socialism Came to America*, and was shortly afterward set forth more directly by Jeremy Rifkin and Randy Barber, who spoke of

> ... laying out the groundwork for both the takeover of pension capital and the implementation of an alternative economic base, one independent of the private-capital sector.[22]

This idea was thus ripe for action when the Sweeney administration took over the AFL-CIO in 1995. As described by Richard Trumka, Secretary-Treasurer of the federation,

> Back in 1995, we did a survey of all the programs around here—what was happening to labor, where were we headed? We found out that workers' money—not only was it not being used to help workers as investors or shareholders, but it was actually being used against us. So we decided to organize our money essentially the way we organize workers.[23]

This decision led to a series of actions, the details of which lie beyond the scope of this briefing.[24] For our purposes, it will suffice to state that the objectives were (a) to capture effective control over proxy-voting decisions by pension fund trustees, (b) to expand substantially the definition of fiduciary responsibility so as legitimize the voting of these proxies on the basis of social policy and other non-financial grounds, (c) to create an infrastructure to promulgate this new standard of accountability

and to forge alliances with other likeminded investors and advocates, (d) to alter the policies of the Securities and Exchange Commission in such ways as to facilitate policy- and governance-based voting, and (e) to use these newly defined and enhanced capabilities to advance campaigns of pressure against corporate management.

In practice, this has led the unions into a large-scale proxy war on corporate America. In 2004, for example, the most recent year for which relatively complete data are available, union-based pension funds sponsored more than 200 shareholder resolutions at corporate annual meetings on topics ranging from splitting the roles of CEO and board chair to preparing reports on corporate political contributions. Not all of these initiatives are primarily aimed at use in the corporate campaign, but they are sufficiently commonplace in that setting to warrant our attention.

The final element of this strategy, at least to date, was, as noted, to find ways of encouraging the financial services industry to engage management in pursuit of the same agenda. To this end, for example, in 2003 the AFL-CIO led a campaign, primarily centered on Fidelity Investments, to impose transparency requirements on proxy voting by fund managers, the theory being that transparent votes were more likely than opaque ones to be cast in favor of resolutions offered by labor and its allies and framed by them as pro-social governance and policy reforms. Most recently, the SEIU has been building infrastructure, which it terms Capital Strategies, for its own concerted campaign in the financial services industry, a campaign that is certain to employ the techniques of the corporate campaign.

While the increasing use of these financial strategies has been the most important trend in recent years, several other developments are also noteworthy. Among them:

By the Numbers. At last formal count, in 1999, there had been some 200 union-initiated corporate campaigns, with new efforts coming online at the rate of about 15 per year.[25] A less formal estimate today suggests that there are at least 15 to 20 campaigns underway at any given time. This is perhaps interesting in itself, but it is also an important indicator of the continuing importance that labor attaches to these efforts, precisely as Mr. Sweeney promised ten years ago. It also means that an ever-widening circle of companies is being swept up into an expanding war on the corporate community per se.

Outside the Lines. In fact, the census of corporate campaigns may well understate the ubiquity of the phenomenon. In the early days of such efforts, there was a clear boundary between campaign-style activities and other means of pressuring companies, and unions saw some value, as well, in literally declaring the commencement of such hostilities. But over time, the number, diversity and potential effectiveness of corporate campaign strategies and tactics have all grown to such a point that the very notion of a boundary is increasingly archaic. Where it was once unusual for a union to form alliances with third parties and exploit stakeholder relationships for the purpose of coercing companies, for example, today it is commonplace, even where no explicit corporate campaign is in progress. Such campaign-style activities are now so thoroughly embedded in the culture underlying union behaviors that it might even be misleading to think that corporate campaigns can somehow be isolated from labor strategies in general.

Getting the Idea. And no wonder. For over the years the labor movement has developed a substantial infrastructure to develop, teach, support and assess the effectiveness of corporate campaign methods. This includes a library full of how-to manuals with such titles as *The Campaign Guide: Organizing the Construction Industry*,[26] which builds explicitly on power structure analysis,

or *A Troublemaker's Handbook: How to Fight Back Where You Work — and Win!*, now in its second edition;[27] courses on such topics as Organizing (including a section on corporate campaign research), Strategic Research for Organizers and Bargainers, Strategic Campaigns in the Construction Industry, Working with the Media, and Capital Stewardship, all offered by the AFL-CIO's National Labor College at the George Meany Center in Maryland;[28] and research reports like the study of the effectiveness of card check and neutrality cited earlier.[29]

Turning Pro. With three decades of experience, hundreds of campaigns and a solid intellectual infrastructure, it should not be surprising that there has emerged a professional class of corporate campaigners—individuals trained and hired expressly for the purpose of attacking corporate targets. While no count of such professional campaigners exists, it is likely they number in the hundreds. Typical position postings list such titles as union (or corporate) campaign researcher, campaign communications director, strategic communications specialist, researcher/strategic campaigner, online advocacy organizer, or even director of investor relations. For example, a listing for an entry-level position with one union in 2005 included the following elements:

- Research companies using a wide variety of sources, including published databases, on-line and Internet sources as well as informational interviews with union, industry and financial sources;
- Conduct local and field research on companies and industries;
- Develop corporate analysis and adapt it for various audiences (e.g. staff, workers, stockholders, the public);
- Develop and implement campaign strategies and tactics.[30]

A listing for a more senior position, as Director of Communications for a surrogate organization involved in the corporate campaign against Wal-Mart, outlined the following responsibilities:

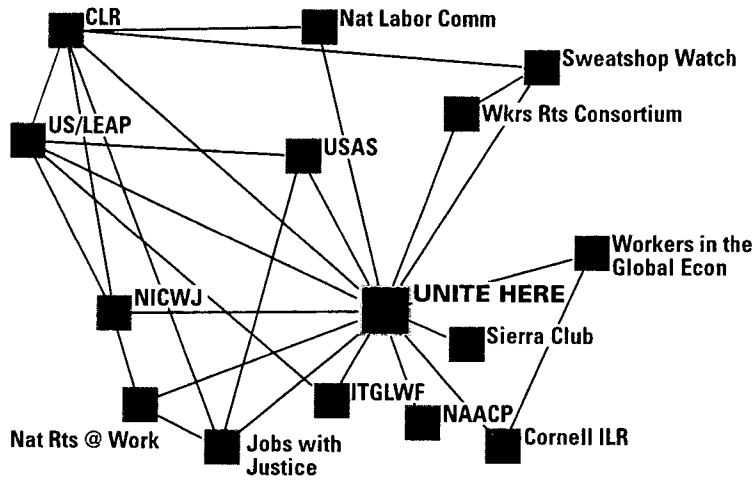
> Lead the message development and execute an effective media plan that will redefine the public's perspective on Wal-Mart, expose and tell the true story of Wal-Mart, promote the center's mission and objective, and brand the center's message and identity through the media.[31]

It is easily the case that the labor federation, its unions and associated organizations advertise for 50 to 100 such positions annually. Indeed, the communications director for the Wal-Mart campaign was being hired to oversee a staff of eight to ten persons.[32]

Paying the Tab. One clear corollary of the professionalization of corporate campaigns is that they cost a lot of money. Associated advertising and other activities also add to their cost. Where does the money come from? To be sure, a significant portion comes from the dues of union members, though under pre-2004 reporting requirements it is difficult to say exactly how much of the unions' organizing and other expenditures is devoted to these activities. But dues are not the only source of financing. For example, affinity credit card (and similar) programs generate millions of dollars a year. In addition, allied, affiliated and surrogate groups such as the Prewitt Organizing Fund are able to raise money from activist foundations and other sources to support aspects of their participation in campaign-related activities.

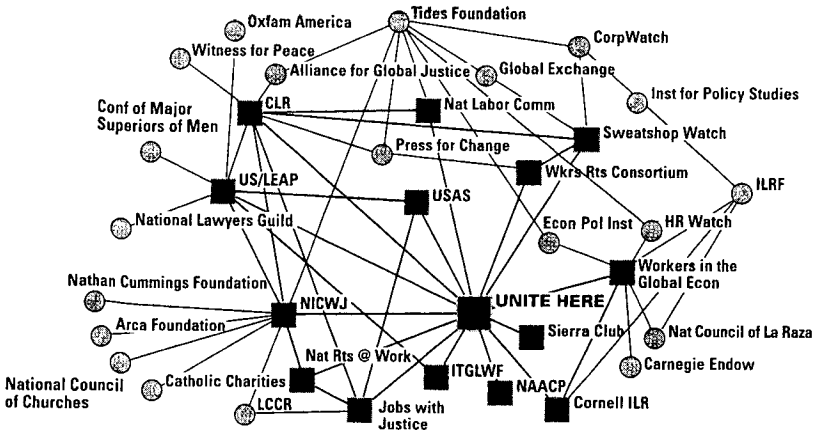
Network News. In the early years of corporate campaigns, unions often found it necessary to develop alliance structures with environmentalists, human rights activists and others to overcome a critical problem—the low credibility the public and others assigned to their attacks on companies. This was a function of a weakness they have long shared with big business—the lack of popular sympathy for their actions. Over the years, however, these alliances have become more extensive, more formal and in many ways more meaningful, to the point that today non-labor advocacy groups carry much of the weight in labor-based corporate campaigns. Figure 3, for instance, summarizes a few of the organizations that have shared direct connections with UNITE HERE, the textile and hotel/restaurant workers union. The lines in the figure represent funding trails, shared programs, leadership links and the like that have been in place at one or another point, or continuously, in recent years.

Figure 3. Selected Organizations with Primary Connections to UNITE HERE



For a key to the acronyms in Figure 3, see Figure 4.

Figure 4. UNITE HERE Network Extended 1 Degree of Separation



KEY: CLR – Campaign for Labor Rights; ILRF – International Labor Rights Fund; IPS – Institute for Policy Studies; ITGLWF – International Textile, Garment and Leather Workers Federation, one of the international trade secretariats of the International Confederation of Free Trade Unions; NAACP – National Association for the Advancement of Colored People; NICWJ – National Interfaith Committee for Worker Justice; USAS – United Students Against Sweatshops; US/LEAP – US Labor Education in the Americas Project.[33] Nodes represented by dark squares have, or have had, direct connections with UNITE HERE. Nodes represented by light circles are networked to UNITE HERE only through intermediary groups or coalitions.

Figure 4 extends this network one step beyond direct links to suggest a few of the organizations with which the union has been connected through these alliances. Collectively, this networking links the union with environmentalists, international labor activists, religious activists and other allies. Among other partner organizations, it includes umbrella groups like Jobs with Justice and the National Interfaith Committee for Worker Justice, which have been established by labor to facilitate local alliances

with clergy and religious leaders, and, not coincidentally, extend these union-centered networks to the local level. It also incorporates surrogate groups, such as USAS and the Workers Rights Consortium, in whose establishment UNITE HERE itself played a key role. And it suggests the role of such activist foundations as Tides, Arca and Nathan Cummings in providing indirect support to union corporate campaign activities. Were we to move one more degree of separation beyond that illustrated in Figure 4, we would begin to illustrate this particular union's links to groups active in Latin American politics and the Zapatista movement in Mexico.

Though their extent, purposes and composition will vary greatly, many unions, and especially those most actively engaged in corporate campaigns, maintain such networks, which are both natural products and foci of partner recruitment for the campaigns themselves.

Making a Left Turn. Labor activists engage in corporate campaigns for a variety of reasons, which we can generally classify as pragmatic, programmatic or ideological. Pragmatic activism is designed to accomplish a particular objective, i.e., engaging in a corporate campaign to organize the workers at a company or to impose more favorable terms in a contract negotiation. This motivation is, in a sense, the most traditional, pointing as it does toward long-standing economic objectives of organized labor, and in the early days of corporate campaigns it predominated. Over time, as the decline of the labor movement continued apace, increasing numbers of campaigners came to be motivated by a more generic interest in movement-building per se, or by an interest in advancing one or another public policy position through the use of such campaigns. The use of campaign techniques to pressure financial services and other companies into dropping their support for the Bush Administration's proposed shift of the Social Security program toward personal investment

accounts in 2005 is a case in point. Finally, in response to those same threats to the viability of the movement, but also as a byproduct of labor's systematic and now long-running outreach to allies in the so-called "progressive left", a growing number of anti-corporate ideologues both within and allied with the labor movement have come to see these tactics as a means to advance their broader political and economic agendas. It is in this context that we have begun to see job listings and campaign objectives that are stated in more expressly political terms. Consider, for example, the primary criterion stated in 2002 for an organizing position posted by SEIU 1199 in Ohio, which stated in large, italicized type: "Must Be Willing to Wage Class War. Liberals Need Not Apply."[34]

Playing Politics. Corporate campaigners have long sought to involve political candidates and office holders in events that called attention to their efforts, and over the years many such politicians, mainly but not exclusively Democrats, have obliged by walking picket lines, issuing statements, or simply boycotting businesses such as hotels or even major news outlets that were campaign targets. A more recent phenomenon is the development, primarily to date by the SEIU, of what we might think of as a blue-state organizing strategy. In states like Illinois or New York, where the unions have powerful legislative and/or gubernatorial allies, they have begun advancing agendas of union-friendly legislation, regulations, and even interpretations of existing laws for the purpose of facilitating member recruitment. Typically focused on the healthcare industry, these range from laws banning the use of public funds by companies to communicate to their workers their concerns about the effects of unionization (New York)[35] to the de facto equating of individual private-sector workers with a class of public-sector workers to change the rules for organizing them (Illinois).[36] This approach is somewhat akin to the wholesale organizing model we discussed earlier, but operates at an even broader level.

Summoning Synergies. From time to time, multiple unions have engaged with a given employer and in some measure coordinated their efforts. Recent examples include cooperation between UNITE HERE and the Teamsters in their campaigns against Cintas (see Table 1) or, for a time, between the SEIU and AFSCME in their efforts to organize healthcare workers in Illinois. For the most part, these cooperative efforts have tended to be more symbolic than substantive. In recent years, however, examples have begun to emerge of much closer cooperation. The campaign against Wal-Mart, for example, has been taken up not only by the UFCW, which first engaged the company in the early 1990s, but by the AFL-CIO itself, by several of its member unions, and most recently, as noted, by the SEIU-based group, Five Stones. At a more tactical level, we have the previously noted 2005 example of UNITE HERE, which, in the course of threatening a strike against Angelica (see Table 1), mailed postcards to new and expectant mothers who were patients in facilities owned by Sutter Health, itself a target of a corporate campaign by the SEIU, which contained the following warning:

> You'll do anything to protect your vulnerable newborn from infection, but your Sutter birthing center may not be taking the same precaution. Reports have surfaced that Angelica, the laundry service utilized by Sutter, does not ensure that 'clean' linens are free from blood, feces, and harmful pathogens. Protect your newborn. Choose your birthing center wisely.[37]

Going Global. Historically, U.S. unions have maintained a friendly, but arm's length, relationship with their counterparts elsewhere, especially those in Europe, and with the international labor movement. In the early days of the corporate campaign, it was generally the case that U.S. unions were both better funded and better schooled in the new campaign methodology than others,

though labor itself had higher standing and more influence abroad than in the U.S. Driven by the pace of economic globalization, and facilitated by the Internet, those bonds have grown closer in recent years, and it is now commonplace to find unions in different countries working in concert to pressure an employer (for example, through a global day of protest against IBM in 2005),[38] to find the industry trade secretariats of the International Confederation of Free Trade Unions collaborating in industry-wide campaigns on a global scale, and to find unions using leverage in one country to pressure an employer in another, as in the campaigns against Quebecor and Wackenhut Security (see Table 1), in both of which parent companies in labor-friendly countries have been pressured to bring U.S.-based subsidiaries into line.

Spinning the Web. Finally, we should take note of the increasing role of the Internet in corporate campaigns. Unions and their allies make extensive use of the Web—for fundraising, for mobilization and event coordination, to inform members or prospective members of their actions, to disseminate information about campaign strategies and tactics, and for the full range of such activism-support mechanisms that are generally well-known today. Perhaps most notable among these are the now routine establishment of Web sites for every campaign that comes along, and sometimes even for individual executives or board members who are targeted for special attention, and the creation of virtual surrogates, or organizations that exist only in cyberspace and only for the purpose of supporting a given campaign. But one less visible use of the Internet in these campaigns may be the most important of all. For one way in which corporate campaigns have evolved over the years is in the ease with which power structure research can be accomplished today simply because much of the information that once required expensive and time-consuming searches of publications and public records can now be completed quickly and conveniently using resources available online. The

savings in time and money for research, not to mention the more complete and more timely information upon which it can be based, has greatly facilitated campaign planning and has doubtless contributed to the increased frequency and sophistication of corporate campaigns.

Conclusion

When we put all of these pieces together, it is evident that corporate campaigns have not only endured and evolved over the past 30 years, but they have emerged as the primary mechanism by which organized labor now confronts corporate management, especially over issues of recruitment and organizing. And yet, these campaigns operate for the most part outside of the established legislative framework of labor-management relations in the United States. They were neither contemplated in the law nor regulated within its letter or intent.

From the perspective of organized labor, which sees itself as besieged at every turn, this is among their principal appeals, for the unregulated character of these campaigns provides the unions with several tactical advantages, not least of which is a claim to be engaging in protected forms of speech. From the perspective of the business community, the fundamentally extortionate quality of these campaigns, wherein a union seeks to intimidate the target company but withdraws its pressure when the requisite concessions are offered, represents their great challenge. And from the perspective of the government, which has a legitimate interest in regulating labor-management relations to protect the interests of workers as well as the broader public interest, the growing reliance on these campaigns may, within a relatively short time, render current legislative frameworks ineffective or largely irrelevant.

To paraphrase Saul Alinky's sixth rule for radicals, an effective tactic is one that entertains those who engage in it. With respect to the corporate campaign, one thing is quite clear. Only one side is having fun.

ENDNOTES

[1] From *The Port Huron Statement* as reproduced in James Miller, *Democracy Is in the Streets: From Port Huron to the Siege of Chicago* (New York: Simon and Schuster, 1987), p. 363.

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[8] There are many variations on this drawing. This one is taken from Jarol B. Manheim, *Power Failure, Power Surge: Union Pension Fund Activism and the Publicly Held Corporation* (Washington: HR Policy Association, 2005), p. 36, reprinted with permission.

[9] Presentation at the annual meeting of the American Political Science Association, Atlanta, Georgia, September 3, 1999.

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[16] Adrienne E. Eaton and Jill Kriesky, "Organizing Experiences Under Union-Management Neutrality and Card Check Agreements," Report to the Institute for the Study of Labor Organizations, George Meany Center for Labor Studies, February 1999, pp. ii-iii.

[17] Quoted in Steven Greenhouse, "Labor Turns to a Pivotal Organizing Drive," *The New York Times*, May 31, 2003, p. A-11.

[18] Quoted in Susie Poppick, "Two Sides Support Ballot, But Not NLRB," *Yale Daily News*, February 18, 2005.

[19] Ibid.

[20] Jarol B. Manheim, *The Death of a Thousand Cuts: Corporate Campaigns and the Attack on*

the Corporation (Mahwah, NJ: Lawrence Erlbaum Associates, 2001), pp. 311-338.

[21] Quoted in James L. Tyson, "As Strikes Lose Potency, Unions Turn to Tactics Outside the Workplace," *Christian Science Monitor*, February 16, 1996, p. 1.

[22] Jeremy Rifkin and Randy Barber, *The North Will Rise Again: Pensions, Politics and Power in the 1980s* (New York: Beacon Press, 1978), p. 1.

[23] Quoted in Aaron Lucchetti, "Union Agenda: Labor Pushes for Changes in Fund Industry," *Wall Street Journal*, March 3, 2003.

[24] For a full analysis of these strategies see Jarol B. Manheim, *Power Failure, Power Surge: Union Pension Fund Activism and the Publicly Held Corporation* (Washington: HR Policy Association, 2005).

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[27] Jane Slaughter, ed. (Detroit: Labor Notes, 2005).

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[30] Listing for a position analyzing Yale University for UNITE HERE, found online May 23, 2005, at *http://www.unionjobs.com/staff/ct/UNITE HERE-yale-2.html.*

[31] Job posting for Five Stones, found online at *http://www.unionjobs.com/staff/dc/fivestones.html*, May 23, 2005.

[32] Ibid.

[33] Brief descriptions of a number of the activist organizations incorporated in the figure can be found in Jarol B. Manheim, *Biz-War and the Out-of-Power Elite: The Progressive-Left Attack on the Corporation* (Mahwah, NJ: Lawrence Erlbaum Associated, 2004), pp. 189-201.

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U.S. Chamber of Commerce
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Washington, D.C. 20062
uschamber.com

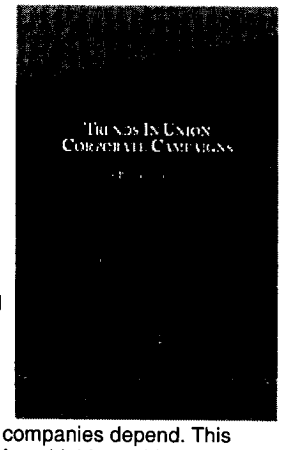
For more information, contact the Labor,
Immigration and Employee Benefits Division
at 202-463-5522

EXHIBIT 23a

Trends in Union Corporate Campaigns

A Briefing Book

Jarol B. Manheim
The George Washington University



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This briefing book summarizes the phenomenon known as the "corporate campaign" and identifies current trends in campaign strategy and tactics. Among the principal observations and findings are the following:

- The corporate campaign was invented by the New Left in the 1970s, and by the 1990s was in widespread use by the labor movement. To date, unions have waged nearly 300 campaigns against employers, primarily, though not exclusively, to facilitate organizing.
- Corporate campaigns employ "power structure analysis" to identify and exploit vulnerabilities in the critical stakeholder relationships on which all companies depend. This broad strategic approach is then implemented through tactics that range from highly sophisticated financial and governance initiatives to street theater and even psychological warfare.
- Typically, the role of the corporate campaign today is to force management to accede to union demands for "card check and neutrality"—a process by which the union certification procedures administered by the National Labor Relations Board (NLRB) are effectively circumvented. A recent innovation here is the substitution of non-NLRB elections for card check, which has been coupled with a widening attack on the NLRB itself.
- The use and conduct of corporate campaigns has evolved over time. Some recent trends:
  - increasing and highly strategic use of shareholder resolutions and proxy voting to pressure directors and senior management;
  - continued development of infrastructure (courses, manuals, funding mechanisms) to support corporate campaigns, and a growing population of professionals, now numbering in the hundreds, whose primary job responsibility is to plan and lead them;
  - increasing numbers of multi-union, or even movement wide, attacks on individual companies, including activity by transnational union alliances and international labor organizations;
  - rapid expansion of networks and coalitions of nonunion allies and surrogates that advance and legitimize union attacks on companies, both within the U.S. and internationally;
  - an increase in the use of corporate campaigns for political, policy or ideological purposes, rather than for economic/ employment purposes.

This report concludes that corporate campaigns play an important and growing role as an alternative to labor-management relations as envisioned in the nation's principal governing legislation. Their continued widespread use may have the result of rendering that legislation ineffective or irrelevant.

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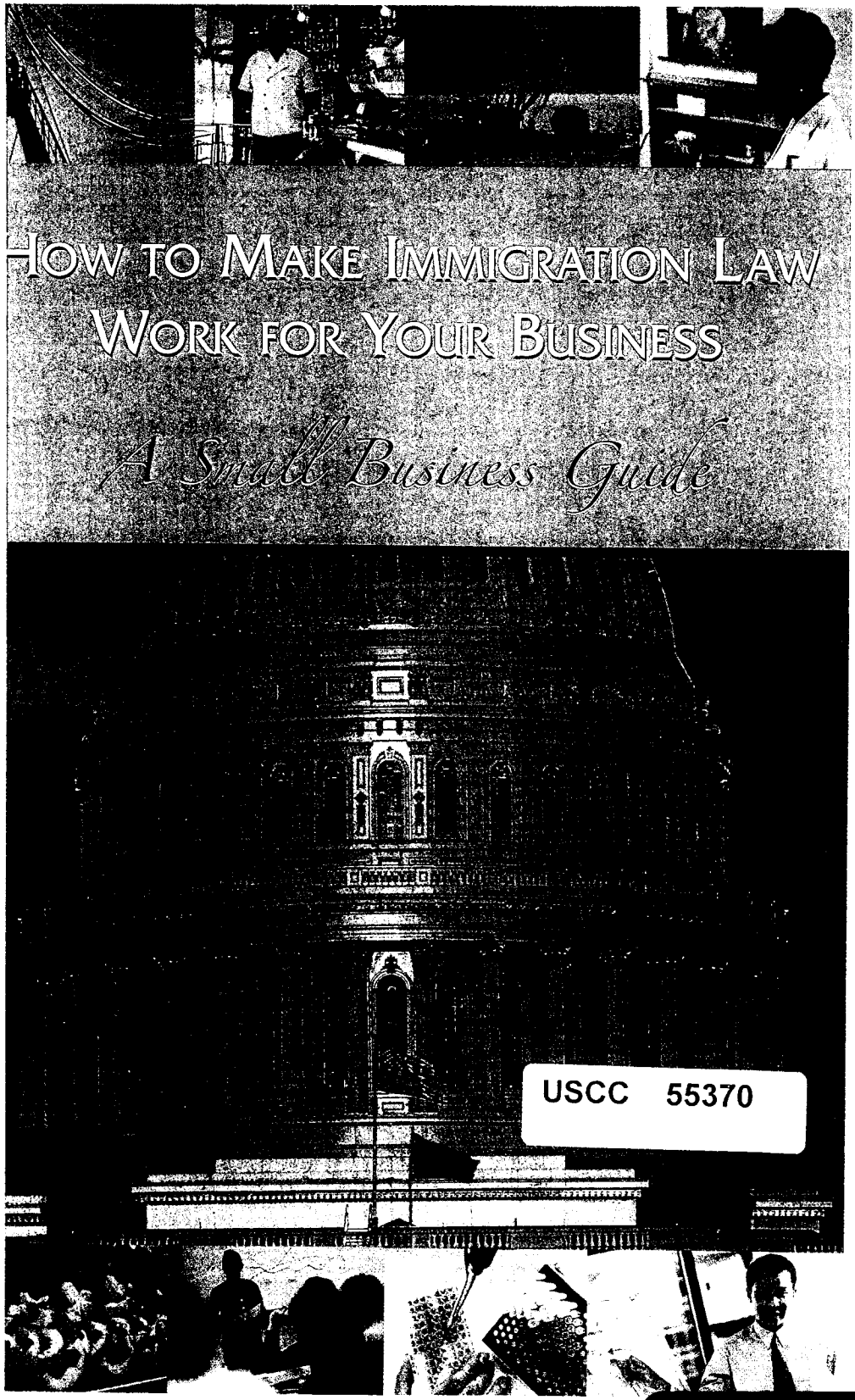
EXHIBIT 24



How to Make Immigration Law Work for Your Business:

A Small Business Guide

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June 2005

For businesses large and small, keeping abreast of developments in immigration law is essential to maintaining a competitive workforce. Standing at the crossroads of domestic labor policy, foreign relations and homeland security, the nation's immigration policy is undergoing unparalleled change. During the last several years alone, more than fifty Congressional enactments have affected virtually every aspect of the immigration process. Within the last two years, the administrative and regulatory framework for enforcing the nation's immigration laws was dismantled and overhauled. Today's businesses understandably find it difficult to adapt to this ever-evolving area of the law.

Proskauer Rose LLP has been assisting businesses for over 125 years. As one of the few law firms that is a national member of the U.S. Chamber of Commerce, we combine our day-to-day representation of businesses with activities that help shape U.S. immigration policy. The firm's Immigration Law Practice Group - one of the largest immigration practice groups within a full-service law firm - assists U.S. businesses from coast to coast and around the world. In keeping with the firm's commitment to the business community, we are honored to have been asked to sponsor and produce "Immigration Law: A Guide For U.S. Businesses." We hope it will become an important resource that will help your company successfully navigate the complex and ever-changing array of immigration laws and regulations.

We gratefully acknowledge the cooperation and support of the U.S. Chamber of Commerce, particularly the Chamber's Vice-President, Labor, Immigration and Employee Benefits, Randel K. Johnson, in bringing this project from concept to completion, and Angelo I. Amador, Director of Immigration Policy, for his insightful editorial assistance. We appreciate the invaluable assistance of our colleagues Peter M. Avery, Christie Del-Rey Cone, Rosetta Ellis, Elana Gilaad, Judson L. Hand, Yvette Gordon Jennings, Devora L. Lindeman, Avram Morell, Mark A. Saloman, Frederick Strasser and Marguerite S. Wynne. We would also like to thank Bre Injeski, a student at the Georgetown University Law Center, for her significant contributions.

Sincerely,

Lawrence R. Sandak

Foreword

In the last decade, national security concerns have driven changes in immigration legislation and focused the attention of employers on employee identification and employment authorization. Accordingly, U.S. businesses too often view the immigration laws as a burden rather than an opportunity, overlooking the significant economic advantages afforded by the global workforce. Yet, businesses, large and small, which have recruited and hired foreign nationals, have secured a competitive edge.

To a small construction company needing laborers not available in its local workforce; a start-up technology firm in need of employees with highly-specialized knowledge and experience; a resort seeking seasonal workers; a biotechnology firm requiring the services of a particular, internationally-known, researcher; or a multi-national conglomerate wishing to transfer key personnel to its U.S. operation, a working knowledge of immigration law is vital. This Guide will outline key immigration law concepts and provide strategies to assist businesses facing the labyrinth of ever-changing laws and regulations. The Guide will identify the alphabet soup of federal agencies with jurisdiction over elements of the immigration process and provide a roadmap to assist U.S. businesses in navigating through the process.

The Guide will not answer every question or apply to every situation. It is intended to provide basic information and, at the very least, a starting point for employers recruiting and hiring from the global workforce.

* * *

Nothing contained in this Guide is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This Guide is intended for educational and informational purposes only.

Part One

AN OVERVIEW OF U.S. IMMIGRATION

A BRIEF HISTORY AND OVERVIEW OF U.S. IMMIGRATION

America's rich immigration history has been a central, if often overlooked, source of the nation's achievement and economic growth. For centuries, foreign nationals striving for better lives have looked to our shores for opportunity. It is the combination of economic opportunity and the human desire to succeed that has made the U.S. a destination for many foreign workers who, in turn, have helped build and sustain our nation's economic and technological prowess.

Immigration legislation is a barometer of our society's acceptance of - and tolerance for - the admission of foreign nationals. During the nation's first one hundred years, Congress neither promoted nor discouraged the influx of foreign nationals; in practice, the law was virtually unrestrictive, thus giving literal meaning to the phrase, "a nation of immigrants." But as economic, social, and cultural conditions changed, so did immigration law.

During the Nineteenth Century, immigration to the U.S. increased rapidly, with 10 million immigrants arriving in search of a better life; while Europe was witnessing the end of its Industrial Revolution, the U.S. Industrial Revolution was just beginning. Foreign nationals who faced depression, persecution, and war at home were lured by the flourishing labor markets in the cities of America's Northeast. The introduction of so large a pool of competing labor caused unrest in the domestic labor force and strained employer/employee relations. In keeping with the predominant economic and cultural viewpoints of the time, Congress responded by enacting a series of qualitative restrictions on immigration targeting the mentally, economically, morally, and criminally "suspect."

On January 2, 1892, both immigration and deportation processing began at the new Federal Immigration Station on Ellis Island in New York Harbor. By 1905, as the number of new immigrants grew to exceed one million annually, Congress created the Dillingham Commission to make a full inquiry and examination of immigration to the U.S. The Commission's findings were partially embodied in the Immigration Act of 1917, which reflected both Congressional opposition to unrestricted immigration and the nation's increasing hostility toward new immigrants who were believed to be resistant to assimilation. The Commission's recommendation to implement numerical quotas was ratified by Congress in the Quota System Act of 1921 and the National Origins Act of 1924, establishing the centrality of national origin in the imposition of strict annual limitations on immigration. National origin would remain the foundation of basic immigration law until the passage of the Immigration and Nationality Act, also know as the "McCarran Walter Act, " in 1952.

The Immigration and Nationality Act affected several groundbreaking changes in immigration law. It eliminated race as a complete bar to immigration and established the foundation of the current employment-based preference system. The Act also gave new attention to the importance of the family unit; in codifying a preference for the familial relationship, it established a cornerstone of modern immigration law.

In 1965, the Immigration and Nationality Act was amended to eliminate the national origin quota system, although longstanding hemispheric quotas were effectively left intact. By 1976, the two hemispheres had been gradually equalized and combined into one annual worldwide quota of 290,000 visas. In recognition of the changing face of the global economy, foreign nationals seeking permission to work in the U.S. had to obtain a "labor certification" from the Secretary of Labor that U.S. workers were unavailable to fill their particular positions. This protected the U.S. labor market from foreign competition where U.S. workers were available, while permitting foreign nationals to fill open positions where U.S. workers were not available.

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) which imposes penalties on employers who hire undocumented workers or fail to take mandatory steps to ascertain whether their employees have permission to work in the U.S.

In the last decade of the Twentieth Century, acting to harmonize the law with the globalization of the world economy, Congress enacted the Immigration Act of 1990 and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991. The new statutory provisions restructured the preference system, modified and established new nonimmigrant categories, and, notably, created the "outstanding researcher or professor immigrant" category and a national interest waiver exemption from the labor certification requirement.

As the Twentieth Century ended, immigration law again came strongly to reflect the U.S. political climate. The Oklahoma City bombing was followed by Congressional enactment of the Antiterrorism and Effective Death Penalty Act of 1996, which aimed at both domestic and international terrorism by expanding deportation grounds for foreign nationals with criminal convictions and strengthening border controls. Again, after the September 11 attacks, sweeping anti-terrorism legislation was enacted impacting the issuance of visas at U.S. Consulates abroad, the review of petitions and applications for immigration benefits, and inspections and admissions at the border. In an effort to exclude suspected terrorists at U.S. borders, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) added new grounds of inadmissibility and allo-

cated additional funds for border security.

On November 25, 2002, the Homeland Security Act was signed into law. Although the Act primarily focused on security and enforcement to prevent terrorist attacks in the U.S., it also abolished the former Immigration and Naturalization Service (INS), created the Department of Homeland Security (DHS), and, as discussed in the following chapter, reallocated responsibility for immigration among various new and existing federal departments and agencies.

GOVERNMENT AGENCIES PRINCIPALLY RESPONSIBLE FOR IMMIGRATION

A. IMMIGRATION ADMINISTRATION AND ENFORCEMENT

Like immigration law itself, principal authority for the administration and enforcement of U.S. immigration law has shifted from one organ of government to another based on prevailing views concerning the benefits and risks of the admission of foreigners. At its inception, immigration law enforcement was handled by state boards under the direction of the federal Department of Treasury. Because of the government's overriding concerns about the economic impact on American workers of an influx of foreign labor, in 1903, the function was transferred to the newly-created Department of Labor.

In 1940, prior to the U.S. entry into World War II, President Roosevelt's Reorganization Plan recognized immigration as a matter of national security. The INS was then transferred from the Department of Labor to the Department of Justice. Primary responsibility for the administration and enforcement of immigration laws remained with the Department of Justice until 2003.

With the enactment of the Homeland Security Act of 2002 (HSA), the DHS was created as part of the largest U.S. government reorganization in more than 50 years. The HSA merged and reorganized the functions of 22 agencies, which together employed 170,000 federal workers. On March 1, 2003, the INS ceased to exist, and the functions previously handled by that agency were transferred to the DHS. The transfer of responsibility included a deliberate separation of the sometimes-conflicting functions previously performed by the INS into the following agencies within DHS.

1. Directorate of Border and Transportation Security (BTS)

BTS is responsible for preventing the entry of terrorists into the U.S., securing its borders, carrying out the immigration enforcement functions formerly performed by the INS, establishing national immigration enforcement policies and priorities, and establishing and administering rules governing the granting of visas or other forms of permission to enter the U.S. While the HSA established the Bureau of Border Security under BTS to perform these functions, the Administration reconfigured the structure and divided mission responsibilities into two enforcement bureaus:

a. United States Customs and Border Protection (CBP)

CBP is made up of about 30,000 employees, including former INS inspectors, as well as agents of U.S. Customs, Agricultural Quarantine Inspections, and Border Patrol. CBP focuses on the movement of people and goods across borders and ensures consistent inspection procedures and coordinated border enforcement.

b. United States Immigration and Customs Enforcement (ICE)

ICE is in charge of interior enforcement (as opposed to border enforcement) and is made up of about 14,000 employees from the former INS, U.S. Customs, and the Federal Protective Service. A significant function of ICE is the detention and removal of unauthorized foreign nationals.

2. United States Citizenship and Immigration Service (USCIS)

USCIS has jurisdiction over all immigration services previously performed and benefits previously conferred by the INS. These functions include the adjudication of visa and naturalization petitions, as well as asylum and refugee applications. In addition, USCIS is responsible for immigration field offices. USCIS is comprised of 18,000 federal employees and contractors working in approximately 250 locations around the world.

B. ADDITIONAL FEDERAL AGENCIES HAVING A SIGNIFICANT ROLE IN THE IMMIGRATION PROCESS

The Department of Labor, the Department of State, and the Department of Justice play a significant supporting role in the administration of U.S. immigration laws.

1. Department of Labor (DOL)

DOL is charged with the administration and enforcement of various federal labor laws and enforcing and administering certain provisions of the Immigration and Nationality Act regarding foreign workers seeking admission to the U.S. for employment. The DOL's Division of Foreign Labor Certification ensures that the admission of foreign workers to the U.S. will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

2. Department of State (DOS)

With few exceptions, foreign nationals seeking entry to the U.S. must first apply for a visa at a U.S. Consulate outside the U.S. In general, the DOS has authority over consulates and embassies abroad through its Bureau of Consular Affairs. The HSA removed and revised some duties

Chapter 2

formally held by the DOS and transferred ultimate responsibility for visa issuance to the DHS. The HSA charges the Secretary of State with the administration and enforcement of its provisions and all other immigration and nationality laws relating to diplomatic and consular officers of the U.S., except those relating to the granting or denial of visas.

The DOS and DHS work in concert to grant or deny applications for nonimmigrant and immigrant visas at U.S. consular posts. Under the terms of a Memorandum of Understanding between the DOS and DHS, the DOS continues to process visa applications and the Secretary of State retains the authority to direct a consular officer to deny a visa to a foreign national in the interest of national security. A consular officer's decision to deny a visa is non-reviewable and final. However, the DHS is ultimately responsible for assuring that security concerns are sufficiently addressed. Therefore, consular officers will receive visa issuance training from the DHS and any and all visa approvals are subject to review by DHS employees assigned to consular posts by the Secretary of Homeland Security.

3. Department of Justice (DOJ)

Within the DOJ, the Executive Office of Immigration Review (EOIR) administers and interprets federal immigration laws and regulations through immigration court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR has three main components: the Board of Immigration Appeals (BIA), which hears appeals of decisions made in individual cases by Immigration Judges, DHS District Directors, or other immigration officials; the Office of the Chief Immigration Judge, which oversees all Immigration Courts and their proceedings; and the Office of the Chief Administrative Hearing Officer, which adjudicates cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

Part Two

FOREIGN VISITORS AND TEMPORARY WORKERS

NONIMMIGRANT VISAS GENERALLY

A. INTRODUCTION

The accelerating globalization of the world economy has fundamentally changed the U.S. economy and labor markets and the manner in which U.S. employers conduct business. Domestic businesses and multinational companies with operations in the U.S. routinely recruit and hire the best qualified candidates from around the world to remain competitive. In addition, U.S. employers often seek to hire foreign nationals who possess special skills to overcome shortages among American workers in certain occupations.

Knowledge of U.S. immigration laws, therefore, has become crucial to the success of many U.S. businesses. Businesses which employ foreign workers in the U.S. are required to employ only those individuals who are authorized to work in the U.S. and are subject to fines and penalties if they fail to do so. Foreign national employees are responsible for maintaining authorized status while in the U.S. or they will face removal and/or a bar from re-entering the U.S. in the future.

Immigration law creates two classes of foreign nationals, nonimmigrants and immigrants. Nonimmigrants are allowed a temporary stay in the U.S., while immigrants may remain indefinitely. U.S. immigration law has designated over twenty different types of nonimmigrant categories, ranging from ambassadors to tourists to students to temporary workers. Each nonimmigrant classification is assigned a letter between A and V, and has its own eligibility requirements and duration. To determine which visa category is most appropriate, a U.S. employer should assess the purpose of an individual's visit to the U.S. or the reason for hiring the foreign national, i.e. the position the foreign national will fill and the job duties to be performed. The chapters which follow describe the immigration process for each business purpose.

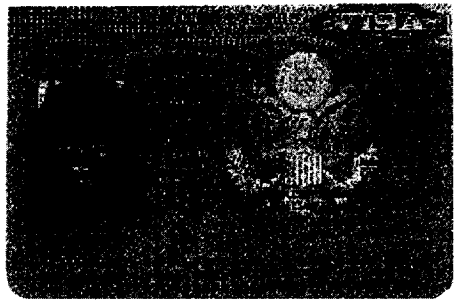
B. NONIMMIGRANT VISA PROCESSING

A U.S. business may hire a foreign national living either in the U.S. or abroad. A newly-hired foreign national already in the U.S. may be eligible to remain here through a change of employer or visa status. Typically, however, a foreign national's initial entry to the U.S. begins by applying for a visa at the U.S. Consulate abroad and admission at a designated port-of-entry.

A foreign national living outside the U.S. obtains a visa from the U.S. Consulate. A U.S. visa allows an individual to travel and apply for admission at a designated port-of-entry. The visa does not allow entry to the

U.S. It is simply a travel document permitting the visa holder to present himself or herself before a CBP officer.

A consular officer will adjudicate the foreign national's visa application to determine whether the individual qualifies for the requested nonimmigrant classification. The consular officer must determine whether a foreign national has "nonimmigrant intent," the intent to return to a foreign residence abroad after his or her temporary stay in the U.S. Immigration law presumes that all persons seeking entry into the U.S. are immigrants who intend to reside in the U.S. permanently. A foreign national seeking nonimmigrant classification must overcome this presumption and prove to the consular officer that he or she intends to depart the U.S. at the end of the permitted stay by showing ties to his or her home country. Such rebuttal evidence could include proof of foreign residence, family and social ties, financial assets abroad, and a round trip ticket. If the consular officer favorably adjudicates the application, the consulate will issue a visa stamp to the foreign national.

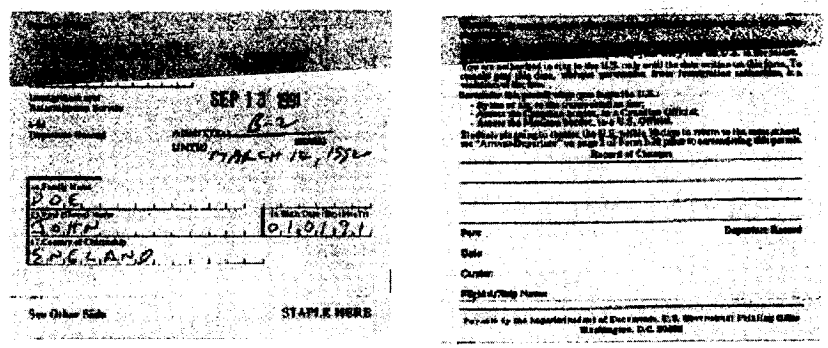


A copy of a U.S. visa stamp, available at: http://www.fels.org/insforms/insdocs.htm

C. ADMISSION AT THE PORT OF ENTRY

Once the foreign national has received a visa stamp, the next step in the nonimmigrant process occurs upon arrival at the U.S. port of entry. At the border, the CBP inspects and admits the foreign national in the status for which the visa was granted. The CBP officer will endorse a foreign national's Arrival/Departure card, entitled Form I-94 (or Form I-94W for visa waiver applicants, discussed below). The Form I-94 is attached to the foreign national's passport and records the date of admission, the status in which the foreign national is admitted, and the duration of his or her authorized stay in the U.S.

The date on the Form I-94 controls the duration of an individual's authorized stay in the U.S. Even though the visa used to travel to the U.S. has its own validity dates, those dates have nothing to do with the length of a foreign national's authorized stay in the U.S. Assume, for example, that a foreign national who traveled to this country under a visitor for business visa (B-1) that expires on September 1, 2005 is admitted to the U.S. on January 1, 2005. If the Form I-94 indicates admission in B-1 status

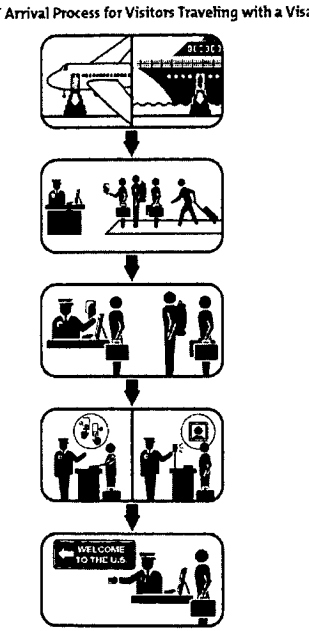


A copy of an I-94 card, available at: http://www.fels.org/insforms/insdocs.htm

until March 1, 2005, the foreign national must leave by that date. By March 2, 2005, if the foreign national does nothing to extend his or her authorized stay, the foreign national has overstayed his or her visit in the U.S. It is irrelevant that the foreign national's visa is valid until September 1, 2005.

D. NONIMMIGRANT VISITORS AND THE US-VISIT ENTRY/EXIT PROGRAM

All nonimmigrant visa holders at the U.S. port of entry are subject to the newly designed entry/exit system known as the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT). The system collects arrival and departure information for nonimmigrants traveling to the U.S. to enhance national security and eventually decrease wait times for admission to the U.S. Individuals subject to the program have their two index fingers scanned and a digital photograph taken to match and authenticate their travel documents. In July 2005, DHS announced that first-time visitors to the U.S. will be required to have all ten fingers scanned upon entry, with continued two finger scans for departures and subsequent

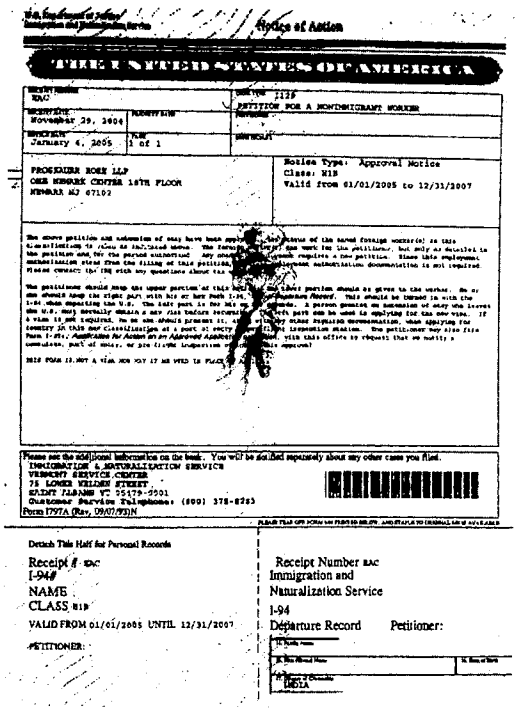


U.S. Visit flowchart, available at: http://www.dhs.gov

entries. Foreign nationals subject to US-VISIT who fail to comply with its procedures may be denied admission to the U.S. on a subsequent trip.

E. EXTENSION OR CHANGE OF STATUS AFTER ADMISSION

Once a foreign national has entered the U.S., he or she may wish to extend or change nonimmigrant status. A nonimmigrant who wishes to extend or change status may, with limited exceptions, apply to a USCIS Service Center. The application must be made while the foreign national is within his or her authorized period of stay. Approval of an extension or change of status request is reflected on the USCIS Form I-797A, which contains a new Form I-94 with updated information on the foreign national's visa classification and/or period of admission.


Notice of Action

THE UNITED STATES OF AMERICA

PETITION FOR A NONIMMIGRANT WORKER

RECEIPT: November 29, 2004 — PRIORITY DATE: January 4, 2005 — PAGE: 1 of 1

PROSKAUER ROSE LLP
ONE NEWARK CENTER 18TH FLOOR
NEWARK NJ 07102

Notice Type: Approval Notice
Class: H1B
Valid from 01/01/2005 to 12/31/2007

Please see additional information on the back. You will be notified separately about any other cases you filed.
IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOUIS PELDER STREET
ST ALBANS VT 05479-0001
Customer Service Telephone: (800) 375-5283
Form I-797A (Rev. 09/07/93)N

Detach This Half for Personal Records

Receipt #
I-94#
NAME
CLASS H1B
VALID FROM 01/01/2005 UNTIL 12/31/2007
PETITIONER:

Receipt Number
Immigration and Naturalization Service
I-94
Departure Record
Petitioner:
H1B

Sample Approval Notice from the USCIS

F. APPLICATIONS FOR LAWFUL PERMANENT RESIDENCE BY NONIMMIGRANTS

All intending nonimmigrants have the burden of demonstrating a genuine intent to remain in the U.S. temporarily. Certain nonimmigrant categories require that the foreign national maintain a residence in a foreign country which he or she has no intention of abandoning. Individuals admitted to the U.S. in those categories generally may not seek lawful permanent residence while in the U.S.

An exception to the rule that nonimmigrants have the burden of demonstrating a genuine intent to remain temporarily in the U.S. applies to workers classified as "H," "L" and "O" nonimmigrants. Foreign nationals in these nonimmigrant classifications may have dual intent,

Chapter 3

meaning they may seek lawful permanent residence in the U.S. without jeopardizing their nonimmigrant status.

G. NONIMMIGRANT CLASSIFICATIONS FOR BUSINESSES PURPOSES

Nonimmigrant visa categories commonly encountered by U.S. businesses include classifications carved out for temporary business activities, foreign nationals with authorization to work in the U.S., trainees and visitors on exchange programs. The B-1 visa and the visa waiver program are most often used by foreign nationals traveling to the U.S. to conduct business. However, foreign nationals traveling to the U.S. for employment will most often enter in one of the following categories: E (treaty traders and investors); H-1B (specialty occupation workers); H-2B (temporary workers); L-1 (intra-company transferees); O (Aliens with Extraordinary Ability and Essential Support Personnel); and TN (Trade, NAFTA Professionals). Certain categories of nonimmigrants are authorized to work incident to their primary status in the U.S. Statuses that permit entry to the U.S. for specific purposes, which might also allow employment, include students and foreign exchange visitors. A U.S. company may also sponsor a foreign national for the purpose of providing training. The chapters below provide guidance on the range of nonimmigrant classifications, including eligibility criteria, procedures, and special characteristics applicable to each.

Chapter 4

B-1 CLASSIFICATION - VISITORS FOR BUSINESS

The most common types of nonimmigrant visas are those issued to temporary visitors for tourism or business. Business travelers often come to the U.S. to attend conferences or company meetings and usually are permitted to remain for the duration of their business purpose. However, to safeguard the jobs of American workers, B-1 visitors are not permitted to hold jobs in the U.S.

A. PROCEDURE FOR B-1 CLASSIFICATION

A B-1 visitor who seeks admission to the U.S. must undergo two separate reviews, one abroad and the other at the U.S. port of entry. He or she must first file an application for a visa with the U.S. Consulate abroad. A consular officer will issue a B-1 visa to a business visitor if the officer believes that the individual:

- Intends to leave the U.S. at the end of the temporary stay;
- Has permission to enter a foreign country at the end of the temporary stay;
- Has the financial means to enable him or her to carry out the purpose of the visit and depart from the U.S. without engaging in unlawful employment; and
- Has a legitimate temporary business purpose that does not involve productive employment.

The foreign national must present sufficient documentation to satisfy each inquiry. Most notably, the foreign national must show that he or she intends to depart the U.S. by demonstrating that he or she has an unabandoned foreign residence to return to after the U.S. visit.

If a business visitor meets the above requirements, a consular officer may issue a B-1 visa for a length of time in accordance with reciprocity schedules set by agreement between the U.S. and foreign nations, up to a maximum of 10 years. The consular officer has sole discretion to decide the length of visa validity. In the event that the consular officer denies a foreign national's visa application, there is no procedure for appeal. The foreign national may, however, refile if he or she so chooses and may present documentation to address the consular official's concerns about the proposed business travel.

Once the B-1 visa has been issued by the U.S. Consulate abroad, the foreign national business visitor travels to the U.S., where he or she must submit to the second review. Upon arriving at a U.S. port of entry, the foreign visitor undergoes "inspection" by an officer of the CBP. The CBP officer reviews the visitor's visa, and will question him or her regarding the purpose and proposed duration of the visit. If the CBP officer believes

that the visitor's trip is consistent with the B-1 classification, the visitor will be admitted to the U.S. in B 1 status for a length of time necessary to carry out the purpose of the trip. Although a visa may be issued by a consular officer for up to 10 years, visa validity does not determine the period of admission set by the CBP officer at the port of entry. Typically, a foreign national may only be admitted for an initial period of up to one year. Extensions of stay may be granted in six month increments. Extension requests must include evidence supporting the need for the additional period of stay.

B. CHARACTERISTICS SPECIFIC TO THE B-1 CLASSIFICATION

B-1 visas are available to foreign nationals engaged in legitimate commercial or professional activities as opposed to employment or labor for hire (i.e. performing services for which a U.S. worker could be hired). B-1 visas are issued to individuals whose functions in the U.S. are incident to international trade and commerce. Therefore, the visitor's foreign employer would normally direct and supervise the B-1 visitor's employment, and a B-1 visitor generally receives remuneration from that foreign employer. Permissible activities include, for example, taking orders for goods manufactured abroad, negotiating contracts, consulting with associates, involvement in litigation, participation in conferences or research projects, as well as attending meetings of the Board of Directors of a U.S. corporation. Participating in scientific, educational, professional, religious, and business conventions are also considered acceptable B-1 activities.

C. DEPENDENTS

The spouse and children (under age 21) of a B-1 nonimmigrant may accompany their family member to the U.S. by obtaining B-2 status. B-2 status may be granted for the duration of the principal B-1's stay. Dependents in B-2 status may not accept employment in the U.S.

D. B-2 CLASSIFICATION - VISITORS FOR PLEASURE

The B-2 classification can be used by foreign nationals who enter the U.S. for pleasure or for medical treatment. The term "pleasure" has been defined by the DOS as legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature. Participation in conferences with fraternal, social, or service organizations would also be considered proper B-2 activities. Visitors for pleasure may not engage in employment.

A consular officer will issue a B-2 visa to a visitor for pleasure if the

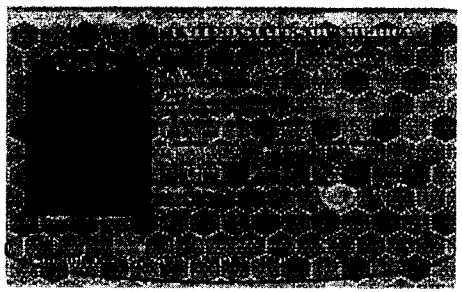
officer believes that the individual:

- Intends to leave the U.S. at the end of the temporary stay;
- Has permission to enter a foreign country at the end of the temporary stay;
- Has the financial means to carry out the purpose of the visit and depart from the U.S. without engaging in unlawful employment; and
- Has shown that the purpose of the trip is for pleasure.

If a visitor for pleasure meets the above requirements, a consular officer may issue a B-2 visa for an initial period of up to 6 months. The consular officer has sole discretion to decide the length of visa validity. In the event that the consular officer denies a foreign national's visa application, there is no procedure for appeal. The foreign national may, however, refile if he or she so chooses and may present documentation to address the consular official's concerns about the proposed travel.

E. VISA WAIVER PROGRAM

Although most business visitors apply for a B-1 visa at a U.S. Consulate abroad, citizens of certain designated countries are allowed to travel to the U.S. without a visa for a period of 90 days or less, pursuant to the visa waiver program (VWP). This eliminates the need to appear before the U.S. Consulate abroad and apply for a visa, simplifying the process of travel to the U.S. Business visitors admitted to the U.S. under the VWP are authorized to conduct the same commercial activities as B-1 foreign nationals. The designated countries are selected by the DOS because they historically have low visa denial rates, reciprocally admit U.S. citizens without visas, and do not jeopardize the interests of U.S. law enforcement or national security. For a country to be considered for the program, it must be sufficiently stable to ensure that conditions, such as overstay rates in the U.S., are not likely to alter significantly. Currently, the following 27 countries are members of the visa waiver program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United



A copy of a machine readable passport, available at: http://www.usembassy.org.uk/images/mrpbig.jpg

Kingdom. An estimated 13 million VWP visitors enter the U.S. annually.

The main advantage of the VWP is that a visa is not required. VWP applicants apply for admission directly at the port of entry. VWP visitors, however, are not entitled to an extension or change of status. VWP applicants must have a round trip ticket indicating their intention to depart within 90 days. As of September 30, 2004, US-VISIT entry and exit procedures were expanded to include visitors traveling to the U.S. under the VWP.

Travelers applying for admission under the VWP must now possess a machine-readable passport. Transportation carriers will be fined $3,300 per violation for transporting any VWP traveler to the U.S. who does not possess a machine-readable passport. In addition, as of October 26, 2005, all passports from VWP countries must contain a digital picture of the passport holder on the data page. If a traveler from a VWP country does not have a digital photograph, he/she must obtain a visa before entering the U.S. As of October 26, 2006, DHS will require that all VWP countries issue E- Passports. E-Passports contain an integrated computer chip which stores biographic information, a digital photograph and personal identifiers.

E CLASSIFICATION - TREATY TRADERS AND TREATY INVESTORS

The E visa category is only available to nationals of a country where a Treaty of Friendship, Commerce and Navigation (FCN), or a Bilateral Investment Treaty (BIT), exists between the country and the U.S. There are two types of E visas available: E-1 for Treaty Traders and E-2 for Treaty Investors.

An individual visa applicant must be a national of a treaty country, and the individual's nationality must be the same as the majority owner(s) of the company sponsoring the visitor. Majority ownership is defined as "at least fifty percent of the shares" of the company. The individual may be the principal treaty trader or treaty investor, or an employee of the U.S. sponsoring company.

There are two levels of personnel who may qualify for treaty visa status. The first level is for executive or managerial employees. The second level is reserved for personnel with "specialized or essential skills and/or knowledge" of the company's products, marketing strategies, international system of operations, or other knowledge not readily available in the U.S. job market.

The individual must intend to depart the U.S. upon the completion of the E visa activities, but does not need to show an unabandoned residence in the home country. An E visa holder may extend status in the U.S., without limitation, and may be the beneficiary of an immigrant visa petition.

The E visa category is based on particular treaties of commerce and navigation or bilateral trade agreements between the U.S. and designated foreign countries that are intended to facilitate commercial interactions and investment. This classification is available only for citizens of those particular countries that have entered into a requisite treaty with the U.S. to qualify for E-1 or E-2 treaty trader or investor status.

A. PROCEDURE FOR E CLASSIFICATION

E visa applicants must apply for a visa at the U.S. Consulate with jurisdiction over their place of residence. E visas may be issued for a maximum of five year increments. Once the E visa has been issued, the foreign national must apply for admission at a U.S. port of entry and may have his or her I-94 arrival/departure card stamped for an admission period of two years. E nonimmigrants may reside in the U.S. as long as they remain an investor, trader or employee of the sponsoring company.

B. CHARACTERISTICS SPECIFIC TO THE E CLASSIFICATION

1. Intention to Depart the United States

A foreign national in E status must demonstrate an intention to depart the U.S. at the completion of his or her E activities. However, unlike the B classification, the foreign national does not have to establish an intention to remain in the U.S. for a specific amount of time or demonstrate an unabandoned foreign residence. Intent can be demonstrated through a written statement.

2. Eligibility Requirements

Both categories of E visas are nationality-specific. The nationality of a business is decided based on the nationality of its owner(s). If a company is owned by more than one individual, the sponsoring employer's nationality is determined by the nationality of the majority (50 percent or more) owners of the company. An E employee must possess the same nationality as the employer. Individuals may be granted E status if they are the trader or investor, or sponsored as an employee who is an executive, manager or individual with essential skills.

3. E-1 Treaty Trader

In addition to the general eligibility requirements for the intended employee, a sponsoring employer must also meet certain criteria to qualify as an E-1 Treaty Trader organization. The company must be engaged in "substantial trade" principally between the treaty country and the U.S. Substantial trade means the systematic exchange, purchase or sale of goods and/or services. Factors that are analyzed to determine the substantiality of the trade include trade volume, value, continuity, and the size of transactions. Trade may be binding contracts that call for a future exchange. Services include international banking, insurance, transportation, communications, data processing and advertising. The exchange should be traceable and identifiable and title to the trade item must pass from one treaty party to the other. Regulations require that over 50 percent of the total volume of international trade conducted by the sponsoring employer be between the U.S. and the treaty country.

4. E-2 Treaty Investors

In addition to the general eligibility requirements for the intended employee, a sponsoring employer must also meet certain criteria to qualify as an E-2 Treaty Investor organization. Specifically, the investment in the U.S. sponsoring company must be "substantial," and the source of investment must have been lawfully acquired and traceable.

Substantial investment is defined as an "at-risk" committed capital investment made to generate a profit. At-risk capital is that which is susceptible to loss, and may be an investor's unsecured business capital, or capital secured by the business's assets. Further, non-cash assets such as intellectual property, inventory, and real estate may also be considered as invested capital for E-2 purposes. The investment must be a substantial portion of the total value of the business or start-up costs of the business in the U.S. There is no minimum dollar investment requirement for E-2 eligibility, and the test for whether the actual investment made is "substantial" will be determined by the type of business conducted by the U.S. entity. The investment must either have already been made, or be actively in progress at the time of the visa application. That is, a qualifying E-2 entity must show the actual commitment of the investment funds.

Finally, the investment made in the U.S. sponsoring company cannot be the main source of income for an individual treaty investor. This means that income generated by the U.S. company must surpass the level required for living expenses of the investor and his or her family.

5. E Dependents

The spouse and children (under age 21) of an E nonimmigrant may accompany their family member to the U.S. by obtaining derivative E status. Derivative status is granted for the duration of the principal E's stay.

Dependent spouses may apply for permission to accept employment. They must apply for an employment authorization document at a USCIS Regional Service Center. The dependent spouse should include proof of the marital relationship, authorized admission to the U.S. and his or her spouse's status. Employment Authorization Documents (EADs) may be issued for up to two years, but not longer than the period of the principal E's status.

H-1B CLASSIFICATION - SPECIALTY OCCUPATION WORKERS

The H-1B specialty occupation program is one of the most common nonimmigrant classifications used by U.S. employers to employ foreign professionals. The H-1B classification is available for positions for which a U.S. bachelor's degree in a related field is the minimum educational requirement, and the foreign national has that degree or its equivalent. The program requires that an employer make attestations to the DOL regarding the employment of H-1B nonimmigrants through submission of a Labor Condition Application (LCA). The employer may not file the H-1B petition for the foreign national until an LCA has been certified for the position. Only a limited number of H-1B visas are issued each year.

A. PROCEDURE FOR H-1B CLASSIFICATION

Two separate U.S. government agencies have responsibility for the H-1B program: the DOL and the USCIS. First, the DOL evaluates and certifies the employer's LCA, in which the employer makes four attestations regarding wages and working conditions. After obtaining a certified LCA, the employer may file the H-1B petition with the USCIS Regional Service Center with jurisdiction over the work location. The USCIS adjudicates an employer's H-1B petition on behalf of the foreign national, which describes the job to be performed and the foreign national's qualifications.

Under current law, a foreign national may remain in the U.S. for a total of six years in H1-B status. Time in L status (if applicable) is counted toward this six year limit. Initial H-1B petitions are normally granted for three years with one three year extension. After the sixth year, a foreign national must leave and remain outside the U.S. for one year before another H-1B petition can be approved. Certain foreign specialty occupation workers may extend their status beyond the six-year limit in one year increments if an application for permanent labor certification or an immigrant visa petition has been filed on their behalf and at least 365 days have passed since the date of filing. Furthermore, certain foreign nationals working on Department of Defense projects may hold H-1B status for 10 years.

B. CHARACTERISTICS SPECIFIC TO THE H-1B CLASSIFICATION

1. Specialty Occupation

A specialty occupation is a job that requires the theoretical and practical application of a body of highly specialized knowledge, evidenced by attainment of a bachelor's degree or higher in the particular specialty, as a minimum requirement for entry into the occupation in the U.S. The for-

eign national must meet the requirements for performing in that specialty occupation.

To establish that the job offered to the foreign national qualifies as a specialty occupation, the employer must show the following:

- A bachelor's or higher degree (or its equivalent) in a field related to the duties is the minimum educational requirement for the position;
- The degree required is common to the industry, or the job is so unique that it can only be executed by a person with the requisite degree;
- The employer normally requires a degree for this position; or
- The nature of the specific duties is so specialized and complex that the knowledge is usually associated with the attainment of a bachelor's or higher degree.

The foreign national, in turn, must demonstrate that he or she has the required education, or its equivalent, for the job offered. USCIS regulations permit a foreign national to qualify for the specialty occupation based on a foreign degree and/or experience that is equivalent to the required bachelor's degree. The USCIS will accept a foreign university degree if it has been evaluated as equal to a U.S. degree by an independent credentials evaluator.

For a foreign national to qualify for a specialty occupation based on experience that is equivalent to a bachelor's degree, the foreign national must show that he or she gained experience though "progressively responsible positions relating to the specialty." Specialized training and/or work experience may wholly substitute for a bachelor's degree. Equivalency may be determined by the USCIS through application of the "three-for-one" rule in which three years of specialized training and/or work experience may be substituted for each year of college-level education that the foreign national lacks.

2. Numerical Limit on H-1B Nonimmigrants

The issuance of new H-1B visas is capped at an annual limit of 65,000, of which 6,800 visas are reserved for citizens of Singapore and Chile. Once the cap has been reached, applications for the following fiscal year (beginning October 1) may not be submitted until April 1, which is 180 days prior to the beginning of the next fiscal year.

Certain H-1B petitions are not subject to the cap, and can therefore be approved in addition to the 65,000 already allocated for the classification. Exemptions from the cap include H-1B petitions for amendments, extensions, and transfers of status. The cap also does not apply to petitions filed by government research organizations, institutions of higher education and nonprofit research organizations. In addition, doctors employed pursuant

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to "State 30" or beneficiaries of federal government agency waivers to work in underserved communities are exempt from the numerical cap. An additional 20,000 H-1B visas are also available for graduates of U.S. master's or higher degree programs.

3. Labor Condition Attestation Application (LCA)

The LCA is a prerequisite to the filing of any H-1B petition with USCIS. The LCA includes basic information regarding employment, such as title and salary for the position and the work location. The LCA also contains four attestations that the employer must make:

- It will pay all H-1B foreign nationals the higher of either the actual wage paid to others with similar experience and qualifications for the specific job or the prevailing wage for the occupational classification in the geographical area;
- It will provide working conditions for the H-1B employee that will not adversely affect the working conditions of workers similarly employed in the area;
- There is no strike or labor dispute in the occupation at the place of employment; and
- It has provided a notice of the filing to the bargaining representative (if the position is covered by union representation), or if there is no bargaining representative, it has posted a notice of filing in at least two conspicuous locations at the place of employment for a period of 10 business days.

The employer must make available at its offices for public examination a copy of the LCA and necessary supporting documentation. This public access folder must contain:

- A copy of the LCA filed with DOL. (Once the LCA has been certified by DOL, a copy of the certified LCA should also be placed in the folder.)
- The documents showing the source of the employer's prevailing wage determination.
- A statement of the wage rate to be paid to the H-1B worker.
- Documentation summarizing the system used to set the actual wage for the occupation.
- Copies of the posting notices (or notice given to the bargaining representative).
- Summary of the benefits offered to the H-1B employee showing that they are the same as those offered to U.S. employees.

On or before the H-1B employee's first day of work, a copy of the certified LCA should be provided to the employee. In addition, certain documentation may be added to the public access file after LCA certification.

For example, where an employer undergoes a change in corporate structure and the new organization chooses to assume LCA liability for the H-1B employee, a statement regarding the assumption of liability must be added to the public access file. In addition, statements regarding changes in the H-1B employee's wage rate should be added to the file.

4. Violations and Penalties

Violations of LCA regulations may result in assessment of back pay wages, civil monetary penalties and debarment from filing any immigrant or nonimmigrant petitions for at least one year.

5. Employer Obligation Upon Dismissal of Employee During H-1B Period

If the employment of an H-1B employee is terminated before the end of the H-1B authorized stay, the employer is liable for the reasonable cost of return transportation to the foreign national's last place of foreign residence. Limited exceptions to this rule are the foreign national's voluntary termination of employment or dismissal for cause. If an H-1B worker's employment is terminated before the end of the H-1B petition approval period, the employer should notify the USCIS of the termination and withdraw the H-1B petition.

6. Change of Employer - H1-B Portability

The American Competitiveness in the Twenty-First Century Act (AC21) facilitated the process of changing employers for H-1B foreign nationals. Pursuant to AC21, an H-1B professional may begin working for a new employer once that employer has filed an H-1B petition requesting extension of valid H-1B status with USCIS. In the past, an H-1B nonimmigrant was required to wait for the petition to be approved by USCIS before he or she could begin working for the new employer. H-1B portability is only available to foreign workers who were lawfully admitted to the U.S. and who have not engaged in unauthorized employment.

C. H-1B DEPENDENTS

The spouse and children (under age 21) of an H-1B nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-1B's stay. Dependents in H-4 status may not accept employment in the U.S.

D. RECENT H-1B LEGISLATION

The Consolidated Appropriations Act of 2005 contains a number of provisions affecting H-1B nonimmigrants. Relevant provisions of the bill

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include: reinstatement of the H-1B dependent employer attestations (which sunset on September 30, 2003); imposition of a modified education and training fee for H-1B filings (which also sunset on September 30, 2003); changes in prevailing wage determinations for LCAs and permanent labor certifications; and imposition of a new anti-fraud fee. The bill also provides for an exemption from the annual H-1B cap for up to 20,000 graduates of U.S. university master's or higher degree programs.

1. Reinstatement of the H-1B Dependent Employer Attestations

H-1B dependent employers are defined as those employers whose workforces, in terms of full-time equivalent employees, are composed of at least 15% H-1B professionals. Under the Act, dependent employer attestations have been reinstituted and made permanent. These attestations require H-1B-dependent employers to affirm that they have attempted to recruit U.S. workers and have not displaced U.S. workers during defined periods prior and subsequent to the filing of the LCA.

2. Education and Training Fee for H-1B Filings

In 1998, Congress imposed an education and training fee of $500, which in 2000 was raised to $1,000. The education and training fee has been reintroduced, made permanent, and increased to $1,500 for most H-1B employers. Employers with fewer than 25 full-time equivalent employees pay only $750. The total number of employees must be determined by including all of an employer's affiliates and subsidiaries. The education and training fee is applicable to an employer's initial petition and first extension on behalf of a foreign worker. Exempted from the fee requirement are certain petitioners, including government research organizations, institutions of higher education and nonprofit research institutes.

3. Prevailing Wage Determinations

The Act eliminates provisions permitting a five percent variance for prevailing wage determinations for LCAs and permanent labor certifications. Pursuant to this provision, all employers filing new H-1B petitions (including requests for extensions) and labor certification applications, must offer the beneficiary 100% of the prevailing wage. Re-evaluation of wages currently paid to H-1B professionals working pursuant to already-approved petitions is not required.

The Act also requires that the DOL provide four tiers, rather than the former two-tiered approach used by Occupation Employment Statistics, for prevailing wage surveys, and where the DOL continues to use a two-tier survey, it must provide a mathematical formula to employers so they may derive the additional tiers. The four tiers of wages must be commensurate

with experience, education and level of supervision of the H-1B beneficiary.

4. Anti-Fraud Fee

The Act also introduced a $500 anti-fraud fee. The fee must be paid by the employer at the time of the filing of all initial H-1B petitions. The fee applies only to the principal foreign national, not to his or her derivative family members and is not required upon extension of the

H-1B classification. However, the fee is required where a new petition is filed due to a change of employer. The revenue from the fee will be divided equally among the DOL, the DHS and the DOS for use in anti-fraud activities, including the hiring of additional personnel.

In addition, the Act allows the DOL to begin LCA investigations without receiving a formal complaint, based only on a "reasonable cause to believe" an employer has violated LCA regulations.

5. H-1B1 Category For Chileans and Singaporeans

A limited number of visas, designated as H-1B1's, are available to citizens of Singapore and Chile. The H-1B1 visa is in addition to all of the other visa categories for which Singaporeans and Chileans are eligible.

Like the H-1B visa, the H-1B1 visaholder must be coming to work in a specialty occupation and must have attained a Bachelor's degree or higher in the specialty field. Like the H-1B, the U.S. employer must provide a labor condition attestation certified by the DOL.

Singaporeans and Chileans who do not possess a Bachelor's degree, but are offered jobs as Disaster Relief Claims Adjusters qualify for H-1B1 status, as do certain management consultants. In addition, Chileans also qualify without attaining a Bachelor's degree if they are offered jobs as Agricultural Managers and Physical Therapists.

To qualify, the job offered must be temporary, not to exceed 18 months. H-1B1 visas are valid for up to 12 months, and are renewable indefinitely.

6. New Visa Category for Australians

On May 12, 2005, President Bush signed into law the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005. The Act created a new non-immigrant visa category - the E-3 - for Australian professionals.

The E-3 visa allows Australians to enter the U.S. to perform a specialty occupation. Thus, the E-3 visa is a hybrid of an H-1B and an E visa. Like the H-1B visa, the E-3 visa holder must be coming to work in a specialty occupation and must have attained a Bachelor's (or higher) degree in the

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specialty field. In addition, the employer is required to file a Labor Condition Application with the DOL. Like the E visa, the E-3 can be renewed indefinitely, with admission periods of up to two years. E-3 visa holders can work for any U.S. employer, unlike the E classification where an employee must work for a treaty employer that is majority-owned by the citizens of his or her home country. The number of E-3 visas is limited each year.

H-2B CLASSIFICATION - SKILLED AND UNSKILLED WORKERS (NONAGRICULTURAL WORKERS)

H-2B visas are widely used by employers who seek to fill temporary seasonal, peak load or intermittent employment needs in industries like hospitality, construction, lodging, and professional sports. A key characteristic of the H-2B classification is that it requires the employer to file a labor certification application which must be distinguished from the Labor Condition Application (LCA). The LCA is used with the H-1B and E-3 petitions (among others) and does not require the employer to go through the time-consuming recruitment process required by a Labor Certification Application. The labor certification process is discussed more fully in Chapter 15 of this Guide.

A. PROCEDURE FOR H-2B CLASSIFICATION

Filing an H-2B application is a two step process. First, the employer must file a Labor Certification Application with the DOL, 60 to 120 days prior to the commencement of employment. Processing of the application is expedited so that employers can meet their staffing needs. If the DOL approves the Labor Certification Application, the employer must then file a nonimmigrant petition with the USCIS. The DOL decision to approve the labor certification is only advisory to the USCIS. The petition must include documentation evidencing the foreign national's qualifications for the job as specified in the application for labor certification. Furthermore, documentation should include an employment contract and a statement describing the employer's need for temporary workers in the U.S.

The length of stay permitted for H-2B foreign nationals is limited by the duration of the employer's temporary need for additional workers, as specified in the labor certification. The initial period of stay in H-2B status may be granted for up to one year. Extensions are issued by the USCIS in one year increments for an additional two years. An employer must file for recertification for each extension of stay requested on behalf of the foreign national.

B. CHARACTERISTICS SPECIFIC TO THE H-2B CLASSIFICATION

1. Labor certification

The Labor Certification Application is filed by the employer with the DOL. The DOL is charged with certifying the application. In order for the DOL to certify the Labor Certification Application the employer must show and must attest on the labor certification that there are no qualified, able, willing U.S. workers available for the job; that the employment of the foreign national will not effect the wage rate and working conditions of similarly situated employed US workers and that the employers need for the job is a one time, seasonal, peak load or intermittent, that is the job must be for less than one year.

Once the employer has filed the Labor Certification Application, the DOL will instruct the employer on recruitment requirements, including advertising the job opportunity in a newspaper of general circulation. Responses from interested prospective employers are sent to the DOL which then refers qualified candidates to the employer for interviews. The employer must prepare a recruitment report that includes the name and addresses of each applicant and the lawful reasons for not hiring the potential applicant.

The DOL will also determine if the employment of foreign nationals will adversely affect the wage rate and working conditions of similarly employed U.S. worker and if the nature of the job offered is temporary.

2. The Standard for Determining the Temporary Nature of the Job Offer

A temporary job opportunity is limited to one of the following types of labor:

- A one time occurrence. A one time occurrence is temporary employment for which the employer has not employed workers in the past and will not need to employ workers to perform the services in the future. A one time occurrence may also arise when an employer must temporarily fill a position that is otherwise permanent, but a temporary event of short duration has created the need for an H-2B worker.
- A seasonal need. A seasonal need for a temporary worker is traditionally tied to a season of the year and is of a recurring nature. Jobs available in the hospitality industry, such as resort workers, are often designated as "seasonal employment."
- A peak load need. An employer with a peak load need must establish that it normally employs permanent workers to perform services and that it temporarily needs to supplement its staff with H-2B workers due to a short-term demand.
- An intermittent need. An intermittent need arises when an employer occasionally or intermittently requires temporary workers for services or labor for short periods of time. When hiring an H-2B worker, the employer must demonstrate that the request for labor is based on one of the above listed categories of temporary employment.

After the DOL makes its decision regarding the labor certification, the employer will file the approved labor certification with its petition to the USCIS.

3. The Numerical Cap

H-2B visas are subject to an annual numerical limit. The cap was reached for the first time during fiscal year 2004. Recent legislation has increased the numerical limit and exempts from the cap foreign nationals who have worked in the U.S. under the H-2B program during 2002 through 2004 and are returning to the U.S. to take up temporary employment during 2005 or 2006. In addition, recent legislation reserves half of the available visas for the first six months of the fiscal year (October - March), and the balance for the rest of the year.

C. H-2B DEPENDENTS

The spouse and children (under age 21) of an H-2B nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-2B's stay. Dependents in H-4 status may not accept employment in the U.S.

L-1 CLASSIFICATION - INTRA-COMPANY TRANSFEREES

The L classification is available to foreign nationals seeking transfer from a firm overseas to its operations in the U.S. A key element to this category is that the U.S.-based company have an affiliate, parent, branch or subsidiary abroad. Foreign nationals in the L classification are commonly referred to as intra-company transferees. The L-1 visa classification may be less burdensome for an employer because it is not subject to a cap and the employer does not have to file an LCA with the DOL as in the H-1B category. In addition, the L-1 category does not require that the individual possess a degree. This is advantageous to a company which wants to transfer a key foreign national who has not graduated from college.

A. PROCEDURE FOR L-1 CLASSIFICATION

The first step in obtaining L-1 classification is for a U.S. employer to file a petition with the USCIS. The foreign national uses the approved petition to apply for an L-1 visa at a U.S. Consulate abroad. L-1 status may be granted for an initial period of three years with two possible two-year extensions for managers and executives (L-1A employees) and one possible two-year extension for specialized knowledge workers (L-1B employees).

B. CHARACTERISTICS SPECIFIC TO THE L-1 CLASSIFICATION

1. Qualifying Corporate Relationship

Before transferring to the U.S., the foreign national must have been continuously employed abroad for one out of the past three years by an affiliate, branch, parent or subsidiary of the petitioning U.S. company. Furthermore, the U.S. and foreign entities must continue to do business for the duration of the L-1 nonimmigrant's stay in L-1 status.

2. One-Year Employment Requirement

Prior to the U.S. transfer, an L-1 beneficiary must have worked abroad for a qualifying entity for one continuous year within the preceding three years in a "managerial," "executive" or "specialized knowledge" position. The position in the U.S. must also be in a "managerial," "executive" or "specialized knowledge" capacity.

The term "executive capacity" is defined as an assignment with the organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes goals or policies of the organization, component or function;

exercises wide latitude in discretionary decision making; and receives only general supervision or direction from higher-level executives, directors or stockholders.

The term "managerial capacity" means an assignment with the organization in which the employee primarily manages the organization, or a department, subdivision, function or component; supervises and controls the work of other supervisory, professional or managerial employees or manages an essential function within the organization or subdivision of the organization; has the authority to hire and fire, or recommend personnel actions, and functions at a senior level within the organizational hierarchy; and exercises discretion over day-to-day operations of the activity or function for which the employee has authority.

The term "specialized knowledge" is defined as either noteworthy or uncommon knowledge possessed of the company's product, service, research and its application in international markets, or advanced knowledge of a company's internal processes and procedures. The beneficiary should possess knowledge that is different from that common to a particular industry.

3. L-1 Blanket Program

The regulations allow an employer to file a preliminary petition, requesting that the DHS approve a company's corporate relationships (i.e. subsidiaries, affiliates) as qualifying for L-1 treatment. Once its corporate relationships are approved by DHS, a company is granted an "L-1 blanket." A company that is granted an L-1 blanket no longer needs to file individual petitions with the USCIS; rather, its employees can apply directly to the U.S. Consulate abroad for an L-1 visa. A company is eligible for an L-1 blanket if it can show that it has been doing business in the U.S. for at least one year; it has three or more domestic and foreign branches, subsidiaries or affiliates; qualifying relationships exist with all related entities; and the petitioner meets one of the following tests: (i) obtained approval of at least ten L-1 petitions during the previous twelve months; (ii) has U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or (iii) has a U.S. workforce of at least 1,000.

C. L-1 DEPENDENTS

The spouse and children (under age 21) of an L-1 nonimmigrant may accompany their family member to the U.S. by obtaining L-2 status. L-2 status is granted for the duration of the principal L-1's stay.

Spouses in L-2 status may apply for permission to accept employment. They must apply for an employment authorization document at a USCIS Regional Service Center. The dependent spouse should include proof of the marital relationship, authorized admission to the U.S. and his or her spouse's status. Employment Authorization Documents (EADs) may be issued for up to two years, but not longer than the period of the principal L's status.

D. RECENT L-1 LEGISLATION

In recent years, layoffs of American workers in the technology field and other perceived concerns in connection with the L-1 category have been widely reported. As a result, Congress passed the Consolidated Appropriations Act of 2005, limiting and restructuring the business activities of certain L-1 workers, effective June 28, 2005.

1. Changes Affecting L-1B Specialized Knowledge Category

The Act prohibits an employer from placing L-1B specialized knowledge employees at third party locations in certain instances. Specifically, this provision prohibits an L-1B employee from being primarily stationed at the worksite of a third party where:

- The L-1B employee will be supervised and controlled by a third party who is not affiliated with the employer for whom the petition was granted; and/or
- The L-1B employee will be placed with an unaffiliated employer to provide labor that does not involve the specialized knowledge of a product or service specific to the petitioning employer.

The Act also strikes an INA section permitting the qualifying employment abroad requirement to be satisfied by six months of employment for L blanket applicants, and restores the original one year requirement. As the one year experience requirement is only applicable to new blanket applicants, it will not affect those already admitted in L-1 status pursuant to the current six month requirement.

2. Anti-Fraud Fee

The Act also introduced a new $500 anti-fraud fee. The fee must be paid by the employer at the time of the filing of all initial L-1 visa petitions, including applications pursuant to L-1 blanket petitions at U.S. Consulates abroad. The fee applies only to the principal foreign national, not to his or her dependent family members, and is not required upon extension of the L-1 visa classification. However, the fee is required where a new petition is filed due to a change of employer. The revenue from the fee will be divided equally among the DOL, the DHS, and the DOS for use in anti-fraud activities, including the hiring of additional personnel.

O CLASSIFICATION - INDIVIDUALS OF EXTRAORDINARY ABILITY

The O-1 category is for nonimmigrants of extraordinary ability in the sciences, arts, education, business, or athletics. The O category is often used by artists, athletes, entertainers, world-renowned chefs, and extraordinary business people.

A. PROCEDURE FOR O CLASSIFICATION

An employer is generally required to file the O-1 petition with the USCIS on behalf of the nonimmigrant. However, in the case of artists, athletes and entertainers, the foreign national's agent may be the petitioner for this classification. If an O-1 nonimmigrant's services are to be rendered in more than one location, the employer or agent must include an itinerary in the petition with the dates and locations of work.

In approving an O-1 petition, an Immigration Officer should grant the petition with a length of status that coincides with the duration of the "event;" i.e. the proposed activities to be performed in the U.S. An initial period of stay may be granted for up to three years. Subsequent extensions in one year increments may be available.

If an O-1 nonimmigrant employee is terminated prior to the end of his or her authorized stay, the employer or agent will be held jointly and severally liable for the foreign national's return transportation to his or her last residence abroad.

B. CHARACTERISTICS SPECIFIC TO THE O CLASSIFICATION

1. Proving Extraordinary Ability in Science, Education, Business, or Athletics

To obtain an O-1 visa to work in the sciences, education, business or athletics, a beneficiary must demonstrate that he or she possesses "a level of expertise indicating that the person is one of the small percentage who have risen to the top of the field of endeavor." Evidence of the individual's qualifications may include receipt of a major internationally recognized award, or documentation satisfying at least three of the following categories:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Membership in associations in the field which require outstanding achievements of their members;
- Published material about the foreign national;
- Participation as a judge of the work of others in the same or allied fields;

- Evidence of original contributions of significance in the field;
- Authorship of scholarly articles;
- Evidence of employment in a critical or essential capacity for organizations with a distinguished reputation; or
- Evidence that the foreign national commands a high salary.

These criteria are closely related to those applicable to employment-based first preference petitions for individuals of "extraordinary ability."

2. Proving Extraordinary Ability in the Arts

Extraordinary ability in the arts implies that the foreign national has attained "distinction." Distinction is defined as "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered." Distinction has also been defined as prominence in the field of endeavor and may be evidenced by nomination for, or receipt of, an important national or international prize or by producing at least three of the following:

- Evidence that the foreign national has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, press releases, publications contracts, or endorsements;
- Evidence that the foreign national has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
- Evidence that the foreign national has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- Evidence that the foreign national has a record or major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- Evidence that the foreign national has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field, in which the foreign national is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the foreign national's achievements; or
- Evidence that the foreign national has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or

other reliable evidence.

This category is interpreted broadly, encompassing occupations beyond just performers, such as choreographers, set designers, essential technical personnel, or music coaches.

3. Essential Support Personnel

In many cases, individuals in O-1 status require the assistance of specially trained support staff. O-2 foreign nationals accompany O-1 principals and must be petitioned for in conjunction with the services of the O-1 foreign national. O-2 foreign nationals must enter for the purpose of assisting the O-1's performance and have critical skills and experience with the O-1 foreign national that cannot be performed by a U.S. worker. Individuals petitioning for O-2 status must have a foreign residence that they do not intend to abandon.

4. Consultation Requirement

Prior to adjudication of either an O-1 or O-2 petition, the USCIS requires a consultation with a U.S. organization, such as a labor union representing workers in the occupation or a peer group with expertise in the field. If there is no such organization the requirement may be waived. A consultation letter may state the opinion of the organization regarding the beneficiary's qualifications or it may simply reflect no objection. Objection by the organization to the foreign national's admission is not binding on the USCIS. Consultations for O-2 beneficiaries should outline the essential role to be played by the support personnel, as well as their relationship to the O-1 visa holder. They should also state whether there are available U.S. workers.

C. O DEPENDENTS

The spouse and children (under age 21) of an O nonimmigrant may accompany their family member to the U.S. by obtaining O-3 status. O-3 status is granted for the duration of the principal O's stay. Dependents in O-3 status may not accept employment in the U.S.

TN CLASSIFICATION - NAFTA PROFESSIONAL WORKERS

In December 1993, the U.S., Canada and Mexico jointly enacted the North American Free-Trade Agreement (NAFTA). NAFTA established a singular, reciprocal trading relationship among the three nations and allowed nonimmigrant classes of admission exclusively for the following business people: temporary business visitors, treaty traders, investors, temporary workers, intra-company transferees and professionals. Entries under NAFTA began in February 1994. This section focuses on professional workers, the TN (Trade NAFTA) classification.

A. PROCEDURE FOR TN CLASSIFICATION

The TN classification is favored by U.S. companies for its expediency. A TN applicant does not need prior USCIS petition approval. TN applicants may present documentation showing eligibility directly at the U.S. Consulate for Mexican citizens, or at the port of entry or pre-flight inspection for Canadian citizens. Upon entry, a TN applicant must demonstrate his or her nonimmigrant intent to the CBP officer. The individual must demonstrate that he or she will remain in the U.S. for a finite period of time to engage in one of the professions listed under NAFTA. In order for a NAFTA professional to enter the U.S., he or she must have a job offer to perform temporary services for a U.S. employer. The foreign national must also prove that he or she has the relevant educational training or work experience to meet the job requirements.

B. CHARACTERISTICS SPECIFIC TO THE TN CLASSIFICATION

TN status is initially granted for up to one year, and may be extended in one year increments. TN status of both Canadian and Mexican nationals may be extended by having their U.S. employer file a petition with the USCIS. Canadian citizens may apply for an extension of TN status at a port of entry. Mexican citizens may apply for an extension of TN status at a port of entry after receiving a new TN visa at a U.S. Consulate.

1. Permissible TN Activities in the U.S.

TN status is available for professions specified in the NAFTA treaty. The foreign national must be seeking entry in the U.S. to work in one of the professions listed and possess the necessary degree and/or work experience for the occupation.

2. Entry Process Under NAFTA

TN application procedures are different for Canadian and Mexican nationals.

a. Canadian Nationals

A Canadian national applying for TN status may apply directly at certain ports of entry. At the port of entry, the foreign national must present the following documentation:

- proof of Canadian citizenship;
- a letter offering employment in a professional occupation listed in the NAFTA treaty;
- evidence of professional qualifications;
- confirmation of salary and its source; and
- a letter confirming the temporary length of employment (not to exceed one year).

Once admitted to the U.S., the foreign national will receive an I-94 card that is valid for one year. The admission card will allow multiple entries.

b. Mexican Nationals

Mexican nationals may apply for a TN visa at a U.S. Consulate in Mexico before arriving at a U.S. port of entry. They must submit to the Consulate documentation similar to that submitted by Canadian nationals. Upon issuance of the visa, the TN visa holder may apply for admission to the U.S. The procedure after admission mirrors that for Canadians.

C. DEPENDENTS

The spouse and children (under age 21) of a TN nonimmigrant may accompany their family member to the U.S. by obtaining Trade Dependent (TD) status. TD status is granted for the duration of the principal TN's stay. Dependents in TD status may not accept employment in the U.S.

F-1 CLASSIFICATION - STUDENTS

The F-1 classification consists of bona fide students admitted to pursue a full course of study in an educational program. These individuals seek to enter the U.S. temporarily and solely for the purpose of pursuing a course of study at an established institution of learning, approved by the USCIS. The F-1 category includes students in colleges, universities, seminaries, conservatories, academic high schools, and other academic institutions. Changes introduced shortly after September 11, 2001 involve extensive and ongoing review of student visa issuing practices, as well as the use of a computer database - Student and Exchange Visitor Information System (SEVIS) - to help immigration authorities track the activities and whereabouts of students in the U.S.

A. PROCEDURE FOR F-1 CLASSIFICATION

In all countries, student visa applicants are required to appear for an in-person interview at a U.S. Consulate with jurisdiction over the foreign national's place of residence. The consular officer must verify the applicant's data in an information database, as well as the student's SEVIS Form I-20. The SEVIS Form I-20 is a document issued by the university or academic institution to the foreign national, which indicates the course of study, expected program duration and the amount of money the foreign national will need to pay for living expenses, as well as for his or her academic studies. The following are the most important documents that an F-1 student must present to the consular officer:

- The letter of admission from the school where the foreign national plans to study;
- The signed SEVIS Form I-20;
- A statement by the foreign national that he or she will leave the U.S. after the completion of his or her studies; and proof of permanent residence in the foreign national's home country, which he or she does not intend to abandon; and
- Evidence that the student has sufficient funds for tuition and living expenses.

Students are generally admitted for "duration of status." Duration of status is defined to include the program of study, any period of practical training authorized, plus an additional sixty day grace period. The SEVIS Form I-20 indicates the expected length of time the foreign national will need to finish his or her course of study. The U.S. government takes a generous position toward students who are enrolled full time in U.S. universities. An F-1 student is permitted to stay until he or she finishes his or

her studies, if granted permission by the school.

B. CHARACTERISTICS SPECIFIC TO THE F-1 CLASSIFICATION

1. SEVIS - Student and Exchange Visitor Information System

SEVIS is a computer database administered by the Student and Exchange Visitor Program, a division of ICE. SEVIS maintains information on international students and exchange visitors, and their family members. The program contains personal information on foreign nationals, such as current address and status at the academic institution. Pursuant to immigration regulations, institutions must inform ICE of the following changes in circumstances: a student begins with a full course of study and then drops below the required amount of credits to be considered for full-time enrollment; a student transfers schools; a student fails to report to school within 30 days of registration; and a student engages in off campus employment.

2. Employment

F-1 students must obtain permission from a designated school official (DSO) before accepting employment. Authorization for part-time employment is issued in limited circumstances, either based upon unforeseen financial hardship or for practical training. A limited period of practical training authorization may also be obtained at the conclusion of a bona fide educational program and during the student's course of study.

Students may be employed in the following circumstances:

a. On-Campus Employment

On-campus work must be performed on the school's premises, including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria, or at an off-campus location which is educationally affiliated with the school and is associated with the school's established curriculum or contractually funded research projects at the post-graduate level. Student employment may not displace any U.S. citizens or residents. Students may work up to 20 hours per week during the school term and full-time during vacation breaks. No special documentation is needed for employment, although authorization from the DSO is required.

b. Off-Campus Employment

To be eligible for off-campus employment, F-1 students must complete at least one academic year (usually 9 months) of study, be in good academic standing, and demonstrate that such work would not interfere

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with their studies. Students may work up to 20 hours per week during the academic term and full-time during vacation breaks only with proper authorization from the DSO. Employment may be authorized in special circumstances, including economic hardship due to unforeseen circumstances. The DSO may authorize off-campus employment with a particular employer if the employer signs a wage and labor attestation verifying unavailability of other workers following a 60-day recruitment period. If approved, the DSO must note the authorization on the student's copy of the I-20ID and notify SEVIS.

Students may also qualify for employment off-campus using practical training in a field related to the student's course of study. There are two types of practical training:

(i) Curricular Practical Training (CPT) - also referred to as cooperative education, alternate work/study, internship, "or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school." CPT is authorized by the DSO on the Form I-20.

(ii) Optional Training (OPT) - a student may choose to engage in OPT either prior to or upon completion of his or her academic program. The student must apply to and obtain permission from the DSO and the USCIS prior to commencing OPT. The student may request either full-time or part-time OPT employment. Employment must not interfere with student's ability to carry a regular full course of study.

Students must complete at least one academic year before they are eligible to participate in either type of practical training, except for graduate students in programs which require immediate participation in CPT. Students who complete one or more years of full-time (or full-time equivalent) CPT are not eligible for post-completion OPT. However, if CPT was for less than one year, the student remains eligible for 12 months of OPT, at the discretion of the DSO. OPT is limited to a total of 12 months, whether used before or after completion of studies. Any OPT performed prior to completion of studies is subtracted from available post-completion OPT.

3. FICA - Federal Insurance Compensation Act

F-1 students are exempt from the Federal Insurance Compensation Act (FICA) as long as they are categorized as "non-residents" for purposes of U.S. tax regulations. Generally, F-1 students are considered "residents" for income tax purposes if they have resided in the U.S. for five years. Full-time students may retain non-resident status beyond five years in some circumstances. The designation of "resident" for tax purposes has no bearing on or relation to a foreign national's immigration status as a lawful perma-

nent resident.

F-1 students may also be exempt from FICA if there exists an applicable tax treaty between the foreign national's home country and the United States. FICA exemptions do not extend to F-2 dependents.

C. F-1 DEPENDENTS

The spouse and children (under age 21) of an F-1 nonimmigrant may accompany their family member to the U.S. by obtaining F-2 status. F-2 status is granted for the duration of the principal F-1's stay. Dependents in F-2 status may not accept employment in the U.S.

H-3 CLASSIFICATION - TRAINEES

An H-3 trainee is a foreign national coming temporarily to the U.S. for training in any field of endeavor. The petitioner must describe the type of training to be given, the source of remuneration for the trainee and whether any benefit will accrue to the petitioner, and must demonstrate why it is necessary for the foreign national to be trained in the U.S. The trainee is not permitted to engage in productive employment unless it is incidental and necessary to the training, and may not accept employment that will displace a U.S. worker.

A. PROCEDURE FOR H-3 CLASSIFICATION

A sponsoring organization submits the H-3 visa petition to the USCIS Regional Service Center with jurisdiction over the location where the training will be conducted. Following petition approval, the foreign national applies for the H-3 visa at a U.S. Consulate abroad. The foreign national must show that:

- He or she is not receiving graduate medical education or training in the U.S.;
- He or she does not have the opportunity to receive similar training in his or her home country;
- He or she needs the training to advance his or her career outside the U.S.;
- He or she will not be productively employed unless it is necessary to the training; and
- The training offered does not displace U.S. citizens and resident workers.

An H-3 trainee's duration of status is determined by the length of the program he or she is attending in the U.S. The period may not exceed two years. Extensions of stay may not exceed the program period. An H-3 trainee who has remained in H-3 status for two years is ineligible for H or L status unless he or she has left the U.S. following the training period.

B. H-3 DEPENDENTS

The spouse and children (under age 21) of an H-3 nonimmigrant may accompany their family member to the U.S. by obtaining H-4 status. H-4 status is granted for the duration of the principal H-3's stay. Dependents in H-4 status may not accept employment in the U.S.

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J-1 CLASSIFICATION - EXCHANGE VISITORS

The J-1 visa classification was implemented to promote educational and cultural exchange. A foreign national qualifies for J-1 classification if he or she is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, coming temporarily to participate in a program designated by the DOS's Bureau of Educational and Cultural Exchange for the purpose of teaching, instructing, lecturing, studying, observing, conducting research or practical training, in an approved exchange program.

A. PROCEDURE FOR J-1 CLASSIFICATION

A foreign national may submit his or her J-1 visa application to a U.S. Consulate in his or her home country. As in the case of the F-1 student visa, the consular officer must verify the applicant's data in the SEVIS database, as well as verify the information on the exchange visitor's SEVIS Form DS-2019. (See Chapter 11 for a further discussion of SEVIS.) The DS-2019 is a certificate of eligibility for exchange visitor status issued by a DOS-designated sponsor. The DS-2019 contains information regarding the applicant, the program sponsor, and the dates authorized in the program.

The J-1 nonimmigrant is authorized to work incident to his or her status for either the exchange visitor program sponsor or appropriate designee and only for employment that is within the guidelines of the program as approved by the DOS.

The J-1 visa holder may enter the U.S. up to 30 days before the designated start date of the program. When the foreign national enters the U.S. on a J-1 visa, he or she will usually be admitted for the "duration of status." That duration is determined by the parameters of the program, and a 30 day grace period following completion of the program. A foreign national may apply for a J-1 visa extension, which may be granted as long as is necessary to complete the program. In certain cases the DOS must approve an extension of a J-1 program.

B. CHARACTERISTICS SPECIFIC TO THE J-1 CLASSIFICATION

1. Eligibility Requirements

Applicants eligible for J-1 visas are:

- Students at all academic levels;
- Trainees obtaining on-the-job training with firms, institutions, and agencies;

- **Teachers of primary, secondary, and specialized schools;**
- **Professors coming to teach or perform research at institutions of higher learning;**
- Research scholars;
- Professional trainees in the medical and allied fields;
- International visitors coming for the purpose of travel, observation, consultation, research, training, sharing, or demonstrating specialized knowledge or skills, or participating in organized people-to-people programs;
- Foreign medical graduates coming for post-graduate medical training;
- Government visitors;
- Au Pairs;
- Camp counselors; and
- Summer workers.

2. Two Year Foreign Residency Requirement

Some exchange visitors are subject to a two year foreign residence requirement that requires them to return to their home country or country of last residence for a period of two years before they may return to the U.S. as permanent residents or nonimmigrants in H or L classifications. This requirement extends to: a) foreign medical graduates entering the U.S. for training; b) those whose program was funded in whole or in part by the U.S. government or the foreign national's government; and c) foreign nationals who possess skills determined by their government to be in short supply in their home country ("Skill's List"). This requirement attaches to accompanying dependents as well as the primary J-1 holder.

Under certain limited circumstances, a foreign national may be able to obtain a waiver of the two year foreign residency requirement.

C. J-1 DEPENDENTS

The spouse and children (under age 21) of a J-1 nonimmigrant may accompany their family member to the U.S. by obtaining J-2 status. J-2 status is granted for the duration of the principal J-1's stay.

Spouses and minor children in J-2 status may apply for permission to accept employment. They must apply for an employment authorization document at a USCIS Regional Service Center. The dependent spouse should include proof of the marital relationship, authorized admission to the U.S. and his or her spouse's status. J-2 employment may be authorized for the duration of the J-1 principal's stay, or four years, whichever is shorter. Income from the dependent's employment may not be used to financially support the J-1 principal.

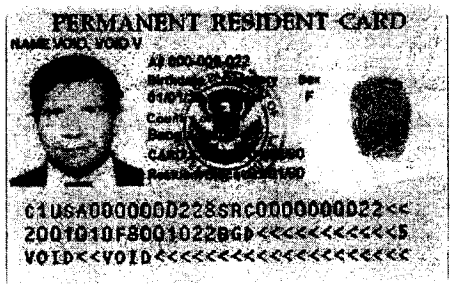
Part Three

LAWFUL PERMANENT RESIDENCE— OBTAINING A GREEN CARD

THE GREEN CARD PROCESS - GENERALLY

A. INTRODUCTION

A lawful permanent resident, commonly referred to as the holder of a "green card" (see above), is a non-citizen who intends to permanently reside in the U.S. and has obtained authorization to do so. There are two basic steps to obtaining permanent resident status under immigration law. First, a foreign national must establish a basis for the status; second, the foreign national must show that he or she is eligible.



A copy of a Lawful Permanent Resident Card, available at: http://www.uscis.gov

A foreign national may seek permanent resident status in a number of categories; common categories that an employer will encounter include:

- Family-Based Immigration: Petition by a U.S. citizen or lawful permanent resident for certain relatives;
- Employment-Based Immigration: Petition by a sponsoring employer, certain religious workers, certain employees of international organizations or due to a major investment in the U.S.;
- Diversity Lottery Program: Application by a foreign national for enrollment in a computer-generated random lottery drawing for permanent residence. The Diversity Lottery Program is only available to individuals from specified countries.

Once the foreign national's basis for permanent residence is established, the individual may apply for permanent residence status. To do so, the foreign national must not be barred by any of the inadmissibility categories specified in immigration law. These categories include criminal, health-related, financial, national security, public interest grounds and prior immigration violations.

This Guide concentrates on business-related immigration, and therefore the chapters that follow provide information only on employment-based immigration.

B. THE EMPLOYMENT-BASED PREFERENCE CATEGORIES

The Immigration Act defines five preference categories for employment-based (EB) immigration. The five EB preference categories are:

First Preference (EB1): foreign nationals with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.

Second Preference (EB2): foreign nationals who are members of the professions holding advanced degrees or their equivalent and foreign nationals who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit the national economy, cultural, or educational interests or welfare of the U.S.

Third Preference (EB3): foreign nationals filling skilled worker positions requiring at least two years of experience; professional positions requiring at least a Bachelor's degree; and unskilled workers.

Fourth Preference (EB4): a host of "special immigrants," of which the most common are certain religious workers and employees or former employees of international organizations.

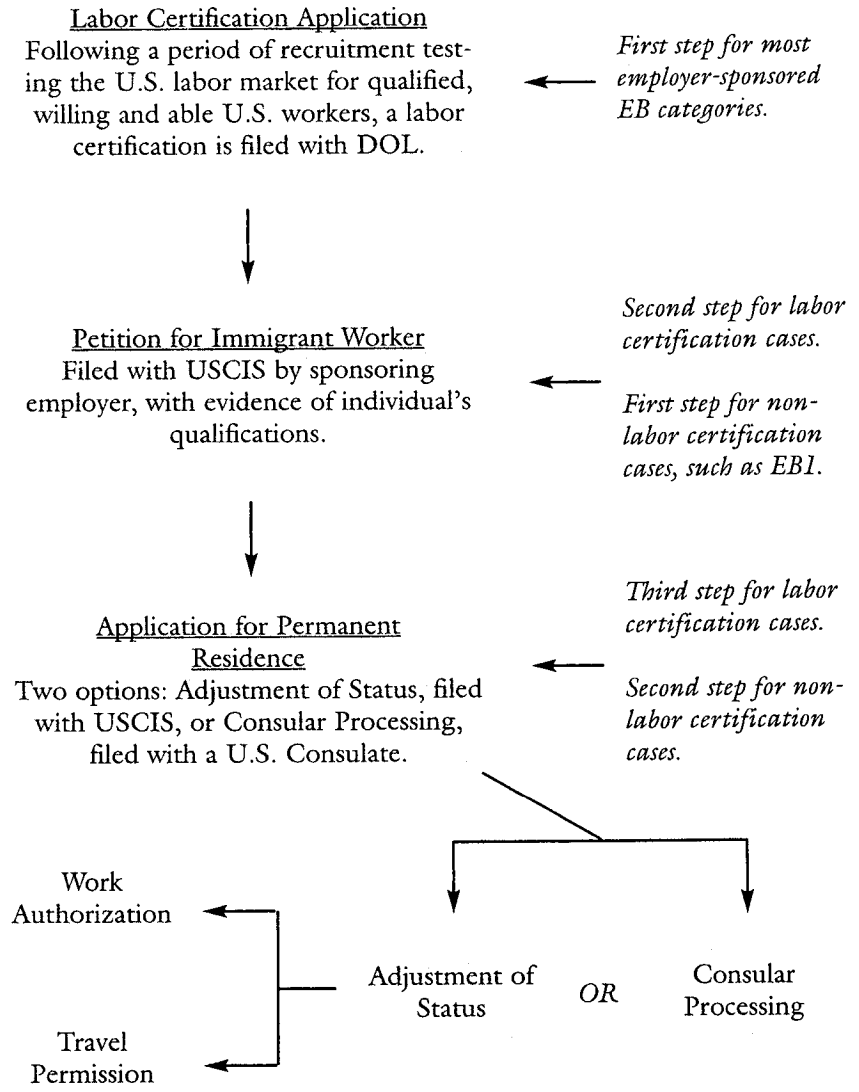
Fifth Preference (EB5): foreign nationals who invest $1,000,000 (or under some circumstances $500,000) in a new commercial enterprise that employs ten U.S. citizens or authorized immigrant workers full-time and engage in the business through day-to-day management or policy formation.

Employers typically use the EB1, EB2 and EB3 preference categories to sponsor foreign national employees for permanent residence. The EB4 and EB5 categories do not require employer sponsorship, and therefore will not be addressed in greater detail below.

C. STEPS IN THE PERMANENT RESIDENCE PROCESS

The steps required in an employer-sponsored permanent residence process depend on the position offered to or held by the foreign national, and the individual's experience and/or education. In most cases, processing entails three distinct steps - labor certification, petition for the immigrant worker, and application for permanent residence status.

Below is an overview of an employer-sponsored permanent residence process.



In some instances, an employee may qualify under a category permitting a two-step process, avoiding the initial labor certification application. Eliminating the labor certification process is important to an employer because, as set forth below, the process is time consuming and costly. Therefore, an employer seeking a "green card" for an employee should assess whether an employee can fit into the EB 1 categories shown in the chart below.

	Category	Labor Certification Application
EB1	Extraordinary Ability	Not required
EB1	Outstanding Professors and Researchers	Not required
EB1	Multinational Executives and Managers	Not required
EB2	Advanced Degree Professionals	Required, unless National Interest Waiver requested
EB2	Exceptional Ability	Required, unless National Interest Waiver requested
EB3	Professionals	Required
EB3	Skilled Workers	Required
EB3	Other/Lesser Skilled Workers	Required
Other	Schedule A: Group 1 (medical personnel, such as physical therapists and nurses)	Not required
Other	Schedule A: Group 2 ("exceptional ability" in science or arts (except for university teachers))	Not required
Other	Special Handling Cases: College/university teachers, professional athletes, etc.	Required (Special Handling)

1. Labor Certification Application

The labor certification process formally begins with an application filed by an employer with the DOL. The application specifies the position offered to the foreign national employee and the terms of employment, such as work location, remuneration and work schedule. In the application, the employer attests that it has conducted a test of the labor market for the position through a recruitment campaign. The DOL is charged with certifying that there are not sufficient U.S. workers who are able, willing, qualified and available to fill the position, based on the employer's recruitment results. In addition, the DOL must determine that the employment of the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers. Once the DOL certification is made, the labor certification step is complete.

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2. Petition for Immigrant Worker

The Petition for Immigrant Worker (Form I-140) is filed with USCIS by a sponsoring employer to establish the basis for its employee to obtain permanent resident status. The Petition is a statement of the employer's intention to employ the foreign national when permanent residence is granted. It must be accompanied by evidence that the employee is qualified for the position offered. Once the Petition is approved by the USCIS, the foreign national may complete the permanent residence process. A foreign national may select between two methods for the final step: Adjustment of Status or Immigrant Visa Consular Processing.

3. Adjustment of Status

A foreign national may elect to complete the final step of permanent resident processing through an application to the USCIS requesting adjustment of his or her immigration status from nonimmigrant to permanent resident. This application must be accompanied by evidence that the foreign national is eligible for the adjustment of status. In some circumstances, the adjustment application may be filed concurrently with the employer's Petition for Immigrant Worker. The employer's Petition for Immigrant Worker must be approved before the individual's adjustment may be granted. Adjustment applicants are eligible for interim work and travel documents.

4. Immigrant Visa Consular Processing

Alternatively, a foreign national may elect to complete the final step of processing at a U.S. consular post in his or her home country or country of last residence before coming to the U.S. The application must be accompanied by evidence that the foreign national is eligible for the status. The employer's Petition for Immigrant Worker must be approved before the application may be submitted. The foreign national must personally appear for a final interview at the U.S. Consulate. The foreign national must maintain nonimmigrant status throughout the process.

D. PRIORITY DATES

Immigration law limits the number of green cards that may be issued each year in most family and employment preference categories. Allocation of the limited green cards available is based on the preference category and place of birth. Since every country is given the same maximum percentage of allocation of the world wide quota, backlogs may develop when more

foreign nationals apply for a green card in a category than are available for their country of birth. Therefore, foreign nationals from countries with large populations can be subject to significantly longer wait times before a visa is available.

The individual's place on line for a green card is determined by his or her priority date. A priority date is assigned when the first step of the permanent residence process, whether it be the labor certification application or the Petition for Immigrant Worker, is filed with the DOL or the USCIS. The priority date must be current - meaning, a green card must be available for the individual - for a foreign national to complete the permanent residence process.

LABOR CERTIFICATION UNDER PROGRAM ELECTRONIC REVIEW MANAGEMENT (PERM)

A. INTRODUCTION TO PERM

Labor certification is a prerequisite for most employer-sponsored petitions. Applications for labor certification are reviewed and adjudicated by the DOL through a process called Program Electronic Review Management (PERM).

The labor certification process has been frustrating to many employers, foreign nationals, and even the DOL due to lengthy processing times and inconsistent review standards nationwide. In response, the DOL issued PERM regulations, which became effective March 28, 2005. PERM replaced both the traditional labor application and Reduction in Recruitment (RIR) processing models, and is now the sole avenue for labor certification.

PERM is intended to streamline and automate permanent labor certification. Labor certification applications (on Form ETA 9089) can be filed on-line at a dedicated DOL website (http://www.plc.doleta.gov) or mailed to one of two national processing centers.

Before the DOL will review a labor application, the employer is required to tender a wage offer for the position that meets the prevailing wage, as determined by the State Workforce Agencies (SWAs) with jurisdiction over the proposed area of employment. Under prior RIR and traditional labor certification application models, the SWAs not only played a key role in making Prevailing Wage Determinations (PWDs) but also in supervising and/or evaluating the sufficiency of an employer's recruitment campaign and analyzing whether the employer's job requirements were the minimum requirements for the job offered. PERM limits the role of the SWAs to making PWDs. Under PERM, the PWD must be issued before the labor certification application may be filed.

B. SETTING JOB REQUIREMENTS

1. Minimum Job Requirements

DOL regulations mandate that the education, training, experience and special skills requirements for the job offered on the labor application be the minimum requirements a prospective employee would normally need to perform the job. An employer may not list job requirements that are higher than the actual minimum requirements, simply because it prefers higher-qualified candidates. For example, if the position normally requires a bachelor's degree and it is the employer's normal practice to hire appli-

cants with bachelor's degrees in the job, the minimum academic requirements should specify that a bachelor's degree is required, despite the employer's preference for someone with a master's degree. Similarly, the employer may prefer four years experience, but if two years is standard for the position and normal in the context of the employer's business, then only two years experience can be required. With limited exceptions, the regulations also prohibit employers from requiring any experience, education, or training that the foreign national gained with the employer. For example, if the job offered is for a computer programmer and the employer requires that all applicants for the position have experience with the C++ programming language, then the foreign national must have had experience with C++ prior to hire for the job offered.

Likewise, requirements for special skills (e.g., computer skills) must be reasonable and in keeping with industry standards for the occupation. A job offer for a computer programmer position using Java is expected to require Java because it is necessary to perform the job duties. However, nonessential skills that can be learned on the job within a reasonable period of time should not be required. The meaning of "reasonable period of time" will depend upon the industry and position.

The position may not be tailored to a particular foreign national's qualifications even if the foreign national is ideal for the position. The benchmark for the employer's job requirements is that they be reasonable and in keeping with the employer's past hiring practices and industry standards for the occupation.

To assist the employer in determining whether the job's minimum requirements are aligned with industry standards, PERM requires the use of O*NET (Occupational Information Network, at http://online.onetcenter.org), a DOL resource that categorizes all occupations into five Job Zones. The O*NET replaces the Dictionary of Occupational Titles (DOT), which was previously used for definitive information on the minimum requirements for a particular position. The O*NET provides the following categories of information within each occupational group: Tasks, Knowledge, Skills, Abilities, Work Activities, Work Context, Work Interests, Work Values and Job Zone. The Job Zone section of the O*NET indicates the amount of preparation needed to perform the job in a normal manner and at an average skill level. The definition of preparation includes the education normally required for the particular Job Zone level and the assignment to the occupation of a Specific Vocational Preparation (SVP) value, discussed below.

The SVP is the amount of education and/or experience required for an individual to learn the skills needed to perform the job at an average level. The SVP is expressed as a numerical value on an ascending scale

from one to nine, which defines the amount of education and/or experience that may be required for an occupation. Job zones were developed to transition from SVP as used in the DOT to the more functional O*NET units reflecting normal occupational requirements. The O*NET consists of only five Job Zones, each with a range of SVP values, for all occupations. Job Zone One, entitled Little or No Preparation Needed (e.g. Mail Clerks) carries an SVP range from 1 through 3 (denoted in the O*Net as Below 4.0), which equates to education and/or experience of a short demonstration through three months. Job Zone Two, entitled Some Preparation Needed (e.g. General Office Clerks) carries an SVP range of 4 through 5 (enumerated in the O*Net as 4.0 to < 6), which equates to education and/or experience of over three months up to and including one year. Job Zone Three, entitled Medium Preparation Needed (e.g. Paralegal) carries an SVP of 6 but less than 7 (enumerated in the O*Net as 6.0 to < 7), which equates to education and/or experience of over one year up to and including 2 years. Job Zone 4, entitled Considerable Preparation Needed (e.g. Computer Systems Analyst), carries an SVP of 7 but less than 8 (enumerated in the O*Net as 7.0 to < 8.0), which equates to education and/or experience of over two years up to and including four years. Job Zone Five, entitled Extensive Preparation Needed (e.g. Physicist), carries an SVP range of 8.0 and above (denoted in the O*Net as 8.0 and above), which equates to education and/or experience of more than four years up to and including ten years (SVP 8.0) and over ten years (SVP 9.0).

DOL regulations specify that job requirements cannot exceed the SVP level for the occupation as established by the O*NET. The only exception to this rule arises if the employer can demonstrate business necessity for the requirement, which is discussed later in this chapter.

2. Prevailing Wage Determinations and Alternative Wage Sources

The first steps for any employer intending to sponsor a foreign national for labor certification is to file a PWD request with the SWA having jurisdiction over the job location. PERM permits the employer to submit successive PWD requests for the same position. The employer is required to offer 100% of the prevailing wage. Bonuses, cost of living allowances, and commissions cannot be used as part of the wage offer unless they are guaranteed (not discretionary) by the employer and paid out as part of the wage on a weekly, biweekly, or monthly basis. In effect, this requirement excludes guaranteed bonuses given at year-end or commissions paid out quarterly from the calculation of the wage offer.

To assist employers with prevailing wage determinations, the DOL provides a range of acceptable governmental wage survey sources, such as

the Occupational Employment Statistics (OES), available on the DOL's website, for comparison. Employers can also consult the Davis Bacon Act (DBA) wage data bank, which covers jobs on federal and state construction projects, or the McNamara-O'Hara Service Contract Act (SCA), which applies to employees of contractors and subcontractors on service contracts with the federal government. The SWAs will not contest an employer's wage offer if either the DBA or SCA wage source is used and properly applied.

The employer may also use other independent surveys to determine the proper wage offer, so long as they comply with DOL regulations. Among many criteria, those regulations mandate that when the survey provides both an arithmetic mean and a median wage, the mean must be used. If a mean is not provided, the median is acceptable. The regulations provide guidance on the acceptable geographic area for a survey to encompass. If wage data is unavailable for a specific area, surveys that encompass larger areas, including statewide surveys, may be acceptable.

Government wage surveys, such as the OES, that previously only provided two wage levels, are now required to provide for four wage levels commensurate with education, experience and the level of supervision required for the position. If the survey only provides two levels, the employer can mathematically derive the other two levels. This is accomplished by subtracting the first level from the second, dividing the difference by three, then adding the quotient obtained to the first level and subtracting it from the second level. For example, if the first level wage is $20,000 and the second level wage is $80,000, the difference between them is $60,000, which divided by three provides a quotient of $20,000. By adding the $20,000 to the first wage level, we derive a wage level of $40,000. Then, by subtracting $20,000 from the $80,000, we derive another wage level of $60,000. This system is a significant improvement over the previous two-level OES usage system which often skewed the second level to unrealistically high wages for mid-level employees.

In the event the SWA disagrees with the wage offer, the employer may submit supplemental survey information for review only once. If the SWA still disagrees with the wage offer, the employer may file a new PWD request. A new request will be treated as a new application and will not be given processing priority. An employer can also appeal the SWA's wage decision to the Certifying Officer (CO) of a PERM processing center. An appeal to the CO must be made within 30 days of the PWD. There is no specific time frame for the CO to decide the PWD appeal.

Once the SWA issues a PWD, the employer is required to keep the original determination in the event the final labor application is selected for audit. A PWD is valid for at least 90 days, but not more than one year,

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from the date of the determination. If an employer does not submit the final labor application while the PWD is valid, it will be required to obtain a new PWD before it can file the PERM labor application.

3. Alternate Job Requirements

The DOL regulations also permit an employer to specify alternate experience, job skills and/or academic requirements in lieu of the basic minimum requirements. The alternate requirements expand the pool of U.S. workers who might qualify for the position. The PERM rule indicates that if the foreign national qualifies for the position under the alternate requirements, but does not qualify under the primary requirements, the application will be considered tailored to the foreign national's qualifications. In that case, the application will not be certified unless the employer indicates in the advertisement that applicants who have any reasonable combination of education and/or experience appropriate to the position will also qualify.

4. Business Necessity

PERM, like the traditional and RIR labor application models before it, recognizes that some U.S. businesses have positions with special requirements beyond those normally required. The rule permits an employer to require experience and/or education that exceed the SVP level for the job if the employer can show the requirements are a business necessity. Requirements such as foreign language fluency or unusual job skills, must also be justified by business necessity.

To show business necessity, an employer must demonstrate that the job requirements - including the special requirements - bear a reasonable relationship to the occupation in the context of the employer's business, and are essential to perform the job duties described by the employer in a reasonable manner. The documentation to support a business necessity argument should be prepared before the labor application is filed because all applications with business necessity requirements will likely be audited by the DOL. The employer must also keep in mind that PERM applications audited by the DOL will not be adjudicated in the 45 to 60 day time frame.

In the specific context of foreign language requirements, PERM regulations provide factors that will be considered in determining whether the requirement is a business necessity. These include:

- The frequency of communication with clients or other employees who do not speak English;
- The percentage of work time spent by the employee using the foreign language; and

- The percentage of the employer's clients, employees, or contractors who do not speak English.

5. Combination of Occupations

PERM allows justification for jobs that combine the duties of several occupations (e.g., a vice president of finance who is also a systems analyst). Positions that combine occupations are often a business necessity for smaller companies. Or, it might be customary in certain industries to combine occupations under one job heading. Regardless of the reason, jobs that combine several occupations must be justified with a business necessity argument and/or an argument that the requirements are normal and standard for the occupation in the industry. A labor application with a combination of duties requirement is likely to be audited by the CO and will therefore likely delay the certification process.

6. Dissimilar Job Duties

PERM, like the traditional and RIR labor application models, does not permit an employer to state requirements that the foreign national did not meet prior to joining the current employer. However, PERM provides an exception to this rule if the experience the foreign national gained with the current employer is not "substantially comparable" to the job offered. Substantially comparable is defined in PERM as a position in which the duties and responsibilities are not the same as the job offered more than 50 percent of the time. Therefore, as long as the employer can show that there are substantive differences between the two positions (e.g., supervising twice the number of people as before; receiving a large salary increase over the prior position; personnel authority that the foreign national did not previously hold; or responsibility for a significantly larger budget), the foreign national may use his or her prior experience, with the same employer, to satisfy the experience requirement. This situation normally arises when a foreign national has worked for the same employer for many years and has been promoted to a more senior position. A dissimilar job duties argument by the employer means the application will likely be audited by the DOL and therefore delay the certification process.

C. NOTICE AND RECRUITMENT UNDER PERM

1. In-House Posted Job Notice and Use of Other Media

An internal printed posting notice regarding the filing of the application is required under PERM. The notice must be posted for at least 10 consecutive business days in a conspicuous location at the place of employment, and the notice period must occur between 30 and 180 days before filing the labor application. If the job offered is covered by a collective

bargaining agreement, notice must be provided to the union bargaining representative. The notice must contain the salary (a salary range is acceptable as long as the lowest part of the range meets prevailing wage), a job description, and the requirements for the position. In addition, the notice must state that any person may provide documentary evidence regarding the application to the CO. Although the primary purpose of the notice is to provide employees the opportunity to comment on the application to the CO, and not to recruit U.S. workers, if an employee applies for the position based on the notice, the employer should document the application and the lawful job-related reasons the employee was not qualified for the job. Documentation of the job order placement and results should be retained by the employer in the event the labor application is audited. The employer may retain the original posted notice on file with a note providing:

(a) the dates on which the notice was posted, (b) responses, if any, to the posting, and (c) how they were addressed.

Employers are also required to use all printed and electronic in-house media (email, flyers, intranet, and the like) to post notice of the job in accordance with the company's normal procedures, for a duration used for similar positions within the company. If the employer does not have, or never uses, in-house media to recruit for similar positions, then a reasonable reading of this regulation would be that it is exempt from this requirement.

2. Basic Recruitment Requirements

PERM requires the employer to conduct recruitment for the job offered before filing the labor application. This recruitment is designed to test the labor market to determine whether there are any willing and qualified U.S. workers for the job. If there is even one qualified U.S. worker who wants the position, and is willing and able to take the job following an interview, the labor application cannot be filed. The only exception is if there are two or more openings for identical positions and the U.S. worker is hired to fill one while the other position remains open.

3. Job Order with the SWA

Employers are required to recruit for the position by placing a job order with the SWA for a period of 30 days. The job order must run from 30 to 180 days prior to filing the labor application. Documentation of the job order placement should be retained by the employer in the event the labor application is audited.

4. Print Advertising Requirements

PERM requires employers to recruit for the position by advertising in

a newspaper of general circulation in the area of employment. The advertisement must run in at least two Sunday editions of the newspaper. The ads may be placed on consecutive Sundays, and must appear between 30 and 180 days before the labor application is filed. If the newspaper does not run a Sunday edition, the advertisement can run on another day with the widest circulation. If the advertisement is run in a suburban newspaper, it may only be run on a Sunday.

The advertisement does not have to contain the salary, but must include:

- The name of the employer;
- The area of employment;
- The job title;
- A description of the job duties and requirements that reasonably defines the job; and
- Information on where to send resumes or contact the employer.

The employer may include the company's physical address or direct résumés to a post office box or a central company office location. If a salary is included, it must meet the prevailing wage. If the employer places the advertisement under a section of the newspaper or heading inconsistent with the position, the DOL will view the recruitment as lacking in good faith, which could result in an audit and requirement to re-advertise under DOL supervision. For positions requiring advanced degrees (master's degree or higher) and experience, the employer has the option to advertise the job opening in a professional journal in lieu of one of the Sunday newspaper advertisements.

5. Three Additional Recruitment Steps For Professional Positions

The employer must undertake three additional recruitment steps if the position offered is a professional one. A professional job is one requiring at least a bachelor's degree. PERM provides a list of occupations classified as professional. The recruitment must take place no more than 180 days before the labor application is filed, and only one of the three additional recruitment steps can occur within 30 days of the filing.

These additional recruitment steps do not require the employer to advertise for the specific position, e.g. senior computer programmer. Instead, the employer need only advertise for openings in the occupations related to the position (e.g., multiple openings for computer programming positions ranging from entry to advanced). The employer must select the three additional recruitment steps for professional occupations from the following list:

- Job fairs
- Employer's web site

- Job search web site other than the employer's (a web page posting of the position, even if posted in tandem with a print ad, qualifies under this step)
- On-campus recruitment
- Trade or professional organizations
- Private employment firms
- Employee referral programs (if they include specific incentives for the referral)
- Notice of the job opening at a college campus placement office (only if the job requires a degree but no experience)
- Local and/or ethnic newspapers if they are appropriate vehicles for the job opportunity
- Radio and television advertisements

6. Documentation of Recruitment Efforts

Following the recruitment, employers are required to prepare and sign a recruitment report describing the results of the recruitment campaign. The report will not be submitted to the DOL with the labor application, but must be retained in case of an audit. The recruitment report must indicate the total number of applicants and the lawful job-related reasons they were not deemed qualified. The employer is not required to name each job applicant, and may sort the applicants who were rejected into categories based upon like reasons for rejection.

If applicants fail to meet the minimum education, training, experience or special skill requirements for the job as set forth in the labor application, they may be lawfully rejected for the position.

7. Documentation Retention Requirements

The employer must retain the following documentation on file for a period of five years from the date of the filing of the labor application:

- Job posting (keep an original posted job notice and the results of the posting);
- Advertising (keep a copy of the entire page of the newspaper or professional journal where the job was advertised);
- Proof of the three additional steps for professional positions;
- Original recruitment report signed by the employer; and
- All of the applicant résumés.

Any and all of this documentation may be requested by the DOL in the event of an audit.

8. Optional Special Recruitment and Documentation Procedures for College and University Teachers

Employers filing labor applications for college and university teachers may utilize the basic recruitment process described above, or select a candidate for the job using a competitive recruitment and selection process through which the foreign national is found to be more qualified than any of the U.S. workers who applied for the job. Under the competitive recruitment and selection process, PERM requires the college or university to provide documentation of the recruitment efforts. These documentary requirements are set forth below:

- A statement signed by the hiring official to detail the recruitment efforts (this is virtually identical to regular PERM applications);
- A report from the committee or body making the selection of the foreign national for the position (note: the labor application must be filed within 18 months of the foreign national's selection for the job offered);
- A copy of an advertisement for the job opportunity in a national professional journal;
- Evidence of all other recruitment sources utilized;
- A written statement specifying the foreign national's professional qualifications and academic accomplishments; and
- A job-posting notice.

D. SUBSTITUTIONS AND SCHEDULE A APPLICATIONS

1. Substitution of Foreign National Using a Certified Labor Application

Once certified, a labor application may be used by an employer to sponsor the named beneficiary or, if certain conditions are met, substitute another foreign national beneficiary. For example, if the original foreign national decides to leave the U.S. permanently and abandon his or her employment with the employer, or if the foreign national's employment is terminated, an employer may substitute another foreign national for the position if that foreign national met all of the job requirements as of the date the labor application was originally filed with the DOL. In addition, the foreign national being substituted will inherit the priority date established by the filing of the labor application for the original applicant.

2. Schedule A Labor Applications

Schedule A pre-certification applications are reserved for those occupations for which there are few qualified, willing, and able U.S. workers. These occupations are divided into Group I and Group II categories. Group I includes professional nurses and physical therapists. Group II includes aliens of exceptional ability in the sciences and arts, and based on PERM, performing artists of exceptional ability.

Schedule A applications are completed on Form ETA 9089, but filed directly with the USCIS together with the Petition for Immigrant Worker. Such applications must be accompanied by the following general supporting documentation:

- PWD from the SWA;
- Evidence, if applicable, that the union bargaining representative was provided with notification of the job opening or, if there is no bargaining representative, evidence that a job notice was posted in a conspicuous location at the intended place of employment for at least 10 consecutive business days; and
- Documentary evidence of recruitment for the job opening in all in-house media normally used for the recruitment of similar positions.

In addition to the general supporting documentation, each group has other special documentary requirements delimited under the Schedule A PERM regulations.

E. LABOR CERTIFICATION ISSUES UNDER PERM

1. Audits and Supervised Recruitment

Any case filed under PERM is subject to audit by the CO. There is no specific timetable for the CO to commence an audit. To initiate an audit, the CO sends a letter to the employer requesting additional documentation. The employer is given 30 days from the date of the letter to respond or withdraw the labor application. If the employer fails to respond, the CO has discretion to:

- Deny the application;
- Require the employer to conduct supervised recruitment for any future labor applications filed within a two-year period; or
- Grant an extension of the 30-day response period.

In the event the CO determines that supervised recruitment is warranted, the procedures are essentially the same as pre-PERM traditional labor application processing. The CO will mandate the recruitment means and schedule. Applicants will be instructed to send their résumés to the DOL, and the DOL will forward them to the employer after review. The employer will assess candidate qualifications and, if necessary, interview applicants. At the conclusion of the recruitment, the employer must provide a detailed recruitment report to the CO documenting the lawful job-related reasons for the rejection of each applicant. The employer will have 30 days in which to complete the report or to request a 30-day extension. The employer's recruitment report must be accompanied by copies of the advertisement and proof of other recruitment as required; any résumés

received by the employer for the job that were not sent to the employer by the CO (i.e., résumés that came from other sources); and, a job posting notice. The CO will notify the employer in writing, either electronically or by mail, whether the application is certified or denied. There is no set timetable for the CO to complete the process.

2. Denial of the Labor Application and Request for Review

If a labor application is denied by the CO, the employer may submit a Request for Review (RFR) of the denial by the Board of Alien Labor Certification Appeals (BALCA). The RFR must be submitted within 30 days of the denial to the CO who denied it. The CO will then develop an appeal file and forward it to BALCA, sending a copy to the employer. The employer may also submit evidence to accompany the RFR on condition that the information was provided to the CO prior to the denial determination. BALCA will give the employer and the DOL 30 days in which to submit or decline to submit a legal brief or Statement of Position outlining their positions. BALCA will either agree with the denial or direct the CO to certify the application. BALCA may also order a hearing regarding the case. There is no set time frame for BALCA to adjudicate a case on appeal.

3. Invalidation or Revocation of a Labor Certification

The CO may revoke the certification of an approved labor application if there is a finding that the certification was unjustified. The CO must provide the employer with a Notice of Intent to Revoke detailing the reasons for revocation. The employer must provide a rebuttal to the Notice within 30 days of its date, and the CO must notify the employer within 30 days of receiving the rebuttal whether the case will be revoked. If a revocation is issued, the employer may appeal. If the employer fails to provide a timely rebuttal, the revocation is final.

Invalidation of an already certified labor application by the DHS or by a Consular Officer might occur if a determination is made that willful misrepresentation or fraud occurred in the labor certification process. Invalidation can also occur if the CO becomes aware that willful misrepresentation or fraud occurred prior to the final adjudication of an application. In this instance, the CO must refer the case to the DHS for review and further action, including possible prosecution.

4. Layoffs and Employer Responsibilities

Prior to filing a PERM labor application with the DOL, employers must notify and consider for the job opening any employees who were laid off within the prior six months due to downsizing, corporate restructuring, reduction in force, or any other involuntary departure from the position

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without cause or prejudice. The employer is only required to consider those employees who were previously employed in the same occupation as the job offered in the labor application, or in a related occupation performing the same duties as apply to the job opening. PERM requires the employer to retain documentation that those former employees were contacted and, if qualified, willing, and able, were offered the position. If the laid-off employee was not hired, the employer must document the lawful job-related reasons for not rehiring the former employee.

5. Labor Applications Pending Under Traditional or RIR Processing Model

Cases filed with the DOL before March 28, 2005 will continue to be processed under regulations governing traditional labor certification or RIR methods. These applications have been transferred to one of two DOL backlog reduction centers. The backlog reduction centers have assumed the role previously played by the SWAs and Regional Certifying Officers.

Employers also have the option to convert these applications to PERM while retaining the foreign national's priority date as long as certain conditions are met. First, the application must not have reached the stage where the SWA has assigned it a job order. Second, the application must meet all the requirements of PERM, including job requirements, business necessity (if applicable), SVP, and prevailing wage. Third, the pending application must be withdrawn prior to a job order placement by the SWA and refiled under PERM rules. Fourth, the job offer for the PERM application must be identical to the withdrawn application inclusive of any amendments either made by the employer or requested by the SWA in an assessment notice. "Identical" is defined in the final rule as an application having the same employer, same foreign national, identical job title, location and description, as well as minimum requirements. Fifth, the employer must refile the new application under PERM procedures within 210 days of withdrawing the prior application.

An employer should be aware of priority dates when evaluating PERM conversion. Since priority dates might impact the timing of a foreign national's permanent residence process, the employer must take the following into account before considering a PERM conversion:

- Conversion of a traditional or RIR application to PERM will retain the priority date of the traditional or RIR application only if the PERM application meets PERM conversion requirements.
- If the conversion is denied because it does not meet the requirements of PERM, the PERM conversion application is treated as a new application with a current priority date (i.e., the priority date of the with-

drawn RIR or traditional application is lost and replaced with a current priority date).

F. THE IMPACT OF CHANGES IN EMPLOYMENT

In most cases, changes in the foreign national's position or prospective position with the employer may impact the viability of the labor certification as a basis of the employer's Petition for Immigrant Worker. As explained above, the purpose of the labor certification step is to test the labor market for the availability of U.S. workers who are willing, able and qualified to take the position offered to the foreign national. If the nature of the job offered to the foreign national changes to the extent that the employer's recruitment campaign does not cover the new position or job location, the labor certification may not be used to support the employer's petition for the individual. A new labor application, based upon a recruitment campaign for the new position and/or job location, must be certified before the employer's sponsorship may continue.

EMPLOYMENT-BASED IMMIGRATION WITHOUT LABOR CERTIFICATION

A. RELEVANT EB CATEGORIES

The employment-based categories discussed in this chapter do not require a labor certification by the DOL. In establishing these categories, Congress reflected a belief that the interests of the U.S. are served by admitting superlative foreign talent and therefore their employment should not be subject to certification by the DOL. The categories are:

1. EB1: Extraordinary Ability

The regulations define individuals with "extraordinary ability" as those who possess a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." Employers petitioning for foreign nationals with extraordinary ability in the sciences, arts, education, business, and athletics must demonstrate such ability by presenting evidence that their achievements have been recognized in the field of expertise and that they have sustained national or international acclaim in their fields. Because Congress intended the extraordinary ability subcategory to be restrictive, it is reserved for a select group of foreign nationals.

To qualify an individual as one of extraordinary ability, an employer must provide evidence that the foreign national has sustained national or international acclaim, and that his or her achievements have been recognized in the field of expertise. The employer must also be able to demonstrate that the foreign national's contributions in the field will "substantially benefit" the U.S. in the future. Unlike the other EB1 categories, a foreign national who qualifies as an individual of extraordinary ability may self-petition and is not required to have sponsorship by a specific employer.

In submitting evidence of extraordinary ability, the petitioner must demonstrate either receipt of a major international prize, or at least three of the following:

- Documentation of the foreign national's receipt of lesser-known prizes or awards for excellence in the field;
- Documentation of the foreign national's membership in associations in the field that require outstanding achievements of their members;
- Published material in professional publications written by others about the foreign national's work in the field;
- Evidence of the foreign national's participation, either individually or on a panel, as judge of the work of others in the same or an allied field;

- Evidence of the foreign national's original scientific, scholarly, artistic, athletic, or business-related contributions to the field;
- Evidence of the foreign national's authorship of scholarly books or articles in professional or major trade publications or other major media;
- Evidence that the individual's work has been displayed at artistic exhibitions or showcases;
- Evidence of the individual's performance in a leading or critical role for organizations with a distinguished reputation;
- Evidence that the foreign national has commanded a high salary or significant remuneration compared to others in the field; or
- Evidence of commercial successes in the performing arts.

Immigration regulations permit submission of other comparable evidence if the criteria do not apply to the field. The USCIS will assess the value and quality of the evidence submitted and make a determination on the individual's qualifications based on whether the evidence, taken together, shows the foreign national's extraordinary ability, and not simply whether the evidence meets at least three of the criteria. Extraordinary ability petitions do not necessarily need to demonstrate the individual's international acclaim; rather, a record of national achievements may satisfy the requirements.

2. EB1: Outstanding Professors and Researchers

Professors and researchers may qualify for the EB1 category if it can be demonstrated that they are outstanding. In addition to outstanding ability, this category requires that the researchers and professors possess at least three years of experience in teaching or research in their academic field and have received international recognition for their work. The regulations define "academic field" as a body of specialized knowledge offered for study at an accredited U.S. institution of higher learning.

To be eligible for classification as an outstanding professor or researcher, the foreign national must be sponsored by an employer offering one of the following types of positions:

1) A permanent, tenured or tenure-track teaching position with a U.S. institution of higher learning;
2) A research position with a U.S. institution of higher learning; or
3) A research position with a private employer that employs at least three full-time researchers and has documented achievements in an academic field.

The employment offered must be for an indefinite period of time. Thus, a grant-based teaching or research position with a specific end date would not meet the regulatory requirements.

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To show that a foreign national is recognized internationally as outstanding the foreign national must submit evidence of meeting at least two of the following six criteria:

- Documentation of the foreign national's receipt of major prizes or awards for outstanding achievement in the field;
- Documentation of the foreign national's membership in associations in the field that require outstanding achievements of their members;
- Published material in professional publications written by others about the foreign national's work in the field. Published material must include the title, date, and author and be translated, if necessary;
- Evidence of the foreign national's participation, either on a panel or individually, as a judge of the work of others in the same or an allied field;
- Evidence of the foreign national's original scientific or scholarly research contributions to the field; or
- Evidence of the foreign national's authorship of scholarly books or articles in scholarly journals with international circulation in the field.

3. EB1: Certain Multinational Executives and Managers

The final category of individuals eligible for EB1 classification are internationally transferred executives and managers.

The requirements for classification in this category are as follows:

1) Employment abroad with the same employer, or an affiliate or subsidiary;
2) For one year out of the previous three years, or the three years prior to the individual's transfer to the U.S.;
3) In an executive or managerial capacity; and
4) An offer of employment in the U.S. in an executive or managerial position.

These are very similar to the criteria necessary to qualify a foreign worker as an L-1 nonimmigrant intra-company executive or manager.

The terms "manager" and "executive" are defined in the immigration regulations. The definition of manager includes those whose duties involve either the management of a function of the organization or the supervision of professional employees. Executive is defined as one who directs the management of the organization or a component of the organization, establishes company goals and policies, exercises a high level of discretion in executing his or her duties, and receives only general supervision from higher level executives.

Petitions to classify an individual eligible under this category must be filed by a sponsoring employer.

4. EB2: Request For National Interest Waiver of the Labor Certification Requirement

A foreign national qualifying under the EB2 category as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, may request a waiver of the job offer requirement. The request to the USCIS seeks a waiver of a specific job offer, and thus a labor certification, if the waiver is in the "national interest" of the U.S. Immigration regulations do not define the term "national interest," leaving interpretation of evidence sufficiency to individual USCIS officers in reviewing cases.

A successful request for a national interest waiver should contain the following elements:

- Evidence that the individual is seeking employment in an area of substantial intrinsic merit. An area of substantial intrinsic merit is defined as employment that benefits the national interest of the U.S. Such areas include healthcare, housing, the environment, and the U.S. economy. In addition, intrinsic merit includes situations where the employment of the foreign national serves to improve wages and working conditions of U.S. workers, or where the foreign national's employment is requested by an interested U.S. government agency;
- Evidence that the proposed benefit will be national in scope; and
- Evidence that the national interest would be adversely affected if a labor certification were required for the individual. That is, evidence must be presented that shows it would be contrary to the national interest to potentially deprive the prospective employer of the foreign national's services by making the position available to U.S. workers.

The final prong goes to the foreign national's contributions to the field of endeavor, and may be met through evidence demonstrating a track record of the individual's accomplishments. These include peer-reviewed publications in the field, conference or seminar presentations of the individual's work, publications about the individual, awards and prizes won by the individual in the field, as well as letters of reference by industry and academic experts in the field.

Part Four

EMPLOYMENT ELIGIBILITY VERIFICATION

OVERVIEW OF EMPLOYER OBLIGATIONS UNDER IRCA

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to combat the increasing rate of illegal immigration in the U.S. Congress believed that the most effective way to deter illegal immigrants from entering the U.S. was to impose obligations and sanctions on the employers hiring them. It reasoned that if employers did not hire illegal workers, primarily entering the U.S. in search of employment, the large influx of illegal immigration would decrease.

IRCA prohibits employers from knowingly hiring or continuing to employ an individual not authorized to work in the U.S. The law requires that the employer verify and attest to an employee's identity and authorization to work in the U.S. The attestation is made under penalty of perjury on the Employment Eligibility Verification Form, Form I-9. Fear that the verification requirements would result in privacy violations and discrimination against persons who appear or sound foreign led Congress to include an antidiscrimination provision in IRCA.

Every employer must verify both the identity and work eligibility of each employee it hires after November 7, 1986, the effective date of the law. The Form I-9 must also be completed for each individual referred or recruited for a fee. The Form I-9 must be completed regardless of an employee's citizenship. Relevant regulations define the term "employee" as an individual who provides services or labor for an employer for wages or other remuneration, and define the term "refer for a fee" as the referral of a potential applicant to an employer to obtain employment in the U.S. When hiring, recruiting, or referring a new employee, employers must comply with the Form I-9 requirement at the time of the employee's actual commencement of employment for wages or remuneration. Although IRCA requires that all U.S. employers possess and maintain a Form I-9 for each employee, it provides exemptions in the following limited instances:

- The employee was hired before November 7, 1986 and has been continuously employed by the same employer;
- The individual is providing sporadic, irregular, or intermittent domestic services in a private household;
- The individual is providing services for the employer as an independent contractor; or
- The individual is providing services to the employer through entities supplying contract services, such as temporary employment agencies. In those cases, the contractor is the employer for Form I-9 purposes.

On occasion, a U.S. employer hires a new employee who completes the Form I-9 at an off-site location and is never physically present at the employer's facilities. Because IRCA requires that the employer review original documentation to complete the Form I-9, the employer may designate an agent to execute the Form I-9 and fulfill all related responsibilities. Agents may include notaries public, accountants, attorneys, personnel officers, foremen, and the like. The law mandates that an employer be held liable for the actions of the agent. Thus, the employer should select an agent carefully. If an agent fails to fully comply with IRCA requirements in the completion of the Form I-9, the employer will be subject to all penalties related to the violations.

An employer violates IRCA if it employs a foreign national knowing that he or she is not authorized to be employed in the U.S. or continues to employ a foreign national that the employer knows has become unauthorized during employment. The "knowing" requirement for this violation encompasses constructive knowledge that, based on the circumstances, the employer has reason to know that a foreign national is not authorized to work. An employer is also held accountable for a knowing hire even if it contracts, rather than directly employs, for the labor of an individual who it knows is not authorized for employment in the U.S.

EMPLOYMENT ELIGIBILITY VERIFICATION REQUIREMENTS

The Form I-9 contains three sections that require accurate completion to ensure compliance with IRCA. Proper completion of this form requires attestations by the employee and employer, as well as the employer's review of specific documentation.

A. SECTION 1 OF THE FORM I-9 - EMPLOYEE INFORMATION AND VERIFICATION

Section 1 must be completed by the employee no later than the close of business on his or her first day of employment. The employer is responsible for ensuring that the employee completes Section 1 in full, signs, and dates the form. Although the employee's attestations regarding his or her employment status are made under penalty of perjury, it is the employer that is held liable when the employee fails to properly complete Section 1 of the Form I-9.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following)

- ☐ A citizen or national of the United States
- ☐ A Lawful Permanent Resident (Alien #) A _____
- ☐ An alien authorized to work until _____

(Alien # or Admission #) _____

Employee's Signature — Date (month/day/year)

Preparer and/or Translator Certification. *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct*

Preparer's/Translator's Signature — Print Name

Address (Street Name and Number, City, State, Zip Code) — Date (month/day/year)

Section 1 of the Form I-9

B. SECTION 2 OF THE FORM I-9 - EMPLOYER REVIEW AND VERIFICATION

In completing Section 2 of the Form I-9, the employer must review original documents, not photocopies, which establish the employee's identity and employment eligibility. The Form I-9 provides three lists of acceptable documents from which the employee may select to establish his or her identity and authorization to work in the U.S. The employer may accept any List A document that establishes an individual's identity and work eligibility. Alternatively, if a List A document is not presented, the employer may accept a List B document that establishes identity and a List C document that establishes work eligibility. The list of acceptable documents has been amended by statute and regulation, however, the Form I-9 has never been updated. DHS has announced its intention to update the Form I-9 in the future to reflect regulatory changes. A list reflecting the amendments is included in the Appendix to this Guide. Employers should train Human Resources personnel responsible for executing duties related to Form I-9s to ensure their knowledge is current and the proper documents are accepted.

The employer may not dictate which documents an employee should present; such a specification is deemed to be "document abuse." The employer should present the list of acceptable documentation to the employee and allow the employee to choose which documents to present.

Section 2 of the Form I-9 must be fully completed by the employer within three business days of the employee commencing employment. If the employee does not present the required documentation within three business days, the employer is required to terminate the employment. The employer may later rehire the individual if he or she presents proper documentation. Section 2 of the Form I-9 requires that the employer or its agent attest, under penalty of perjury, that he or she has physically examined the employee's original documents, and that the documents appear to be genuine and relate to the employee.

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any) _____		_____		_____
Document #: _____				
Expiration Date (if any) _____				

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* _____ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative — Print Name — Title

Business or Organization Name — Address (Street Name and Number, City, State, Zip Code) — Date (month/day/year)

Section 2 of the Form I-9

1. Reviewing Documents Presented by Employee

IRCA does not mandate that an employer independently verify the authenticity of the documentation presented by an employee. Rather, IRCA requires that the employer review and accept documentation presented by the employee as long as the documents reasonably appear to be